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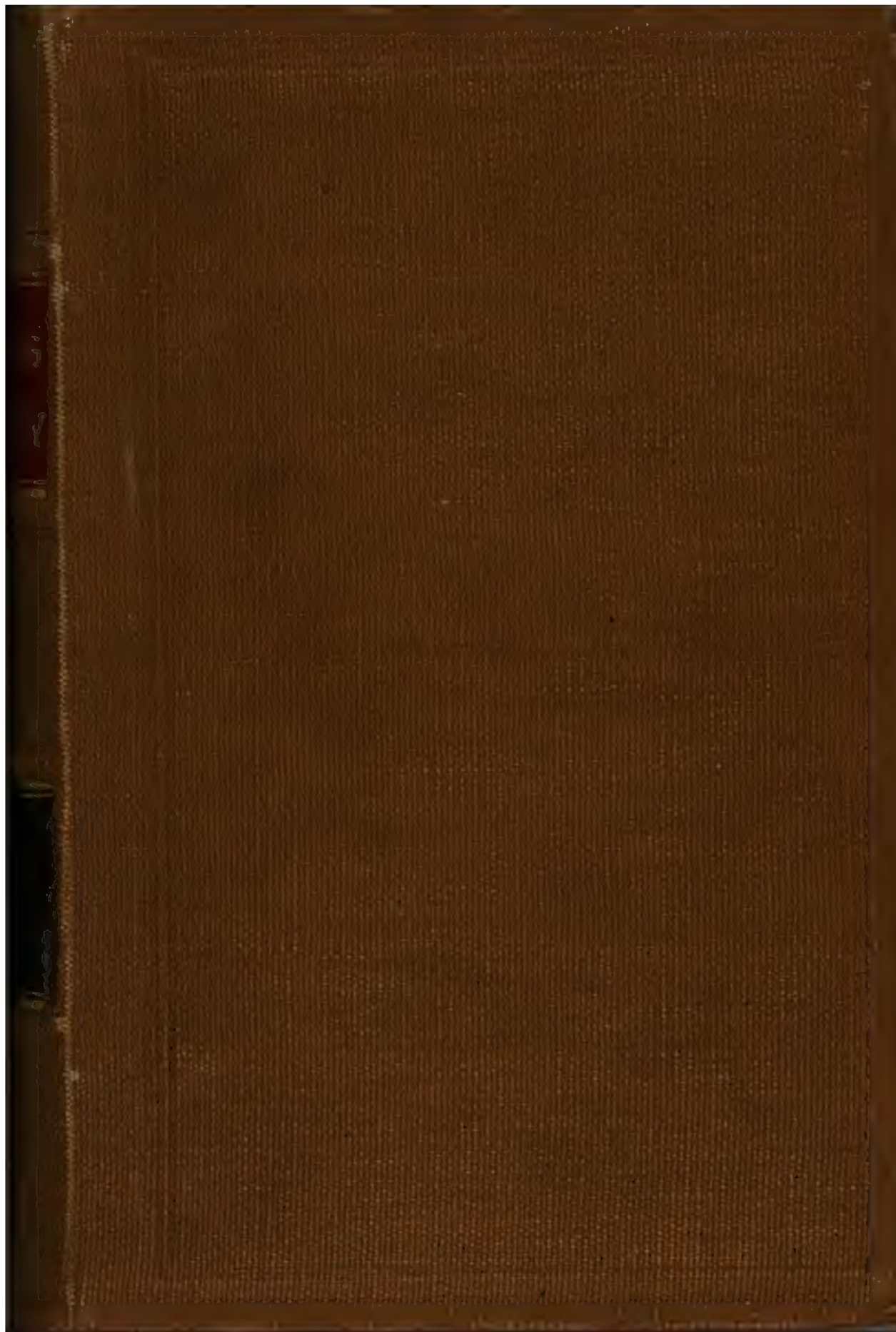
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THE
AMERICAN ADMIRALTY

ITS
JURISDICTION AND PRACTICE,
WITH
PRACTICAL FORMS AND DIRECTIONS.

BY
ERASTUS C. BENEDICT, LL.D

**"The worst Civil Code would be one which should be intended for all nations indiscriminately
The worst Maritime Code, one which should be dictated by the special interest and
particular influence of the customs of only one people."—PARDESSUS**

FOURTH EDITION

REVISED BY
EDWARD GRENVILLE BENEDICT
OF THE NEW YORK BAR

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PREFACE TO THE FIRST EDITION.

THE practice of the Admiralty Court of this country, notwithstanding the very considerable attention which has been sometimes given to it has been so generally neglected, that, with the exception of a few lawyers in the larger commercial cities, the whole bar make no secret of their ignorance of this branch of legal learning. Having imbibed the English notions on the subject, they have supposed the jurisdiction to be confined to a small class of cases, not worth the labor of learning a new course of proceeding. They do not seem to have adverted to that American view of the subject, which, springing out of the peculiar character of our institutions, considers the jurisdiction of that class of cases as a most important branch of the national sovereignty, given to the General Government for the wisest purposes.

Every day gives new cause to admire the profound sagacity, the practical wisdom and forecast of our fathers, in providing for an unknown future, and a territory to be extended indefinitely, under the forms of our double government. In the judicial and commercial grants in the Constitution, that wisdom is especially apparent, at this time, when the Commercial Era, with its new means and its new discoveries, is opening before us a most conspicuous and responsible career among the nations. To me it is quite clear, that those grants, in all the plentitude of their simple and comprehensive phraseology, convey to the General Government only what is necessary to secure the equality and fraternity of the States, and the strength and respectability of the Union. With fifty thousand miles of coast and shore of navigable waters, no one can estimate the extent of our future commerce, or the value to us of a system of commercial law, with its course of procedure,

uniform throughout the nation, and harmonious with that of the rest of the world.

The following work is but an attempt to present the American view of the subject, in such a light as to exhibit its proper importance and to make it practically useful. If it comes up to the intention of the author, it will take a place left unoccupied by the highly useful works on Admiralty Practice, which have previously appeared. His purpose was, so to exhibit the subject, that the most inexperienced learner, as well as the riper professional student, could not fail, in reading it, to have his mind interested in the subject, and be directed to the means of settling, to his satisfaction, its general principles as well as its practical details.

He has endeavored to avoid a common error in elementary books of practice, of writing for those only who already understand the subject—leaving the beginner to pick up by experience and observation those rudimental principles and directions, which, to him, are of the first necessity. This has led to the insertion in each portion of the work—the Jurisdiction—the Practice—and the Forms—of many things which to some may seem unimportant.

In a practical matter, nothing can well supply the place of that emphasis and distinctness which come from visible illustrations. The practical forms are for that reason very full and various—they embrace numerous and important classes of maritime cases, presented under various aspects. As precedents from actual practice, they are intended to inculcate and illustrate principles, as well as to serve for practical forms—and, it is believed, they may be read with profit, if not with interest.

In offering that work to the profession, the author makes no apology for some obvious departures from the common standard of excellence, which professional, as well as literary criticism, may find occasion to censure. They were adopted as a part of this plan, and, in general manner and substance, the book is what he intended to make it. If it fails to give to the reader, a theoretical and practical view of “*Cases of Admiralty and Maritime Jurisdiction*,” and of the Practice of “*Courts of Admiralty, as contradistinguished from Courts of Common Law*,” the author has not accomplished his purpose.

In printing a new work from manuscript, verbal and typographical errors seem to be unavoidable—a few of them are noticed in the *Errata*, and the reader is requested to make the corrections with a pen.

ERASTUS C. BENEDIOT.

New York, 1850.

PREFACE TO THE FOURTH EDITION.

The first edition of Benedict's Admiralty appeared in 1850. Its author, Erastus C. Benedict, published a second edition in 1870. His nephew and law partner, Robert Dewey Benedict published a third edition in 1894. The author's grand-nephew is the reviser of this, the fourth edition, issued sixty years subsequent to the first appearance of the work.

As to the time when it was first published, the extent of the constitutional grant to the United States of judicial power in all cases of admiralty and maritime jurisdiction had not been appreciated. One of the reasons for the preparation of the book was the author's belief in the broad jurisdiction of the American admiralty under the constitutional grant, and the author advocated his belief boldly. Today, the jurisdiction of the Admiralty over maritime matters is universally admitted, not only over matters arising on the ocean, but on inland waters, on navigable lakes and streams and on canals, without regard to tides, or currents, or distance from the sea, or size of flotilla, or concurrence of Federal and State jurisdiction, or even whether the vessel is water-borne or not. Nevertheless the author's treatment of the subject has been left practically untouched, save as its arguments have been rendered valueless by reason of subsequent legislation or decision. It is believed that it all has interest and value from an historical point of view.

The portion of the work which deals with practice, however, has changed with every edition. When it was first issued, the limitation of liability statutes had not been enacted: the Circuit Courts of Appeal were forty years ahead; the Supreme Court had but five years before announced the Admiralty Rules, the promulgation of which was the active incentive to the preparation of the book. Even at the time of the publication of the

edition which preceded the present one, i. e., the third edition of 1894, the Circuit Courts of Appeal had been established but three years, and the present rules of the Southern and Eastern Districts of New York had been in existence but one year. The several editions have attempted to keep pace with the changes in, additions to and crystallization of the practice. It is surprising to find how many decisions have been and are being handed down on subjects which would seem to be so limited in their nature as the jurisdiction and practice of the Admiralty Courts. Nearly one thousand cases are cited in this edition which did not appear in the edition of 1894. For the present edition the practice in limitation of liability proceedings and on appeals has been entirely re-written, and the chapters on the general practice have been much revised, while a great deal of matter which has been deemed obsolete has been omitted.

The book is essentially a New York book as to its practice. The District of New Jersey is contiguous to those New York Districts which include the waters about New York City, and as the flotilla of such waters not infrequently make enforced voyages through the District Court for the District of New Jersey, it has been deemed advisable to insert the rules of that District rather than the rules of the Northern District of New York, which have appeared in previous editions.

The forms have been thoroughly revised, as those which were set forth even in the last edition retained to a great extent the style employed by practitioners of sixty years ago. The forms in this edition have been largely redrawn, many new ones have been inserted, and it is believed that they will meet the main requirements of the practitioner of today. It is not asserted, however, that they need be closely followed; for while the tendency of the admiralty courts is toward a greater formality than they once assumed, they are still courts which pay no great regard to form.

In preparing this edition, aid, by way of suggestion and criticism from brother lawyers of the admiralty bar has been sought. It has invariably been cheerfully given and has been of great value.

PREFACE.

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The writer's father, Robert Dewey Benedict, the editor of the third edition, and now retired from active practice, has reviewed the present edition, and many of his suggestions are embodied therein. The comments on the Rhodian Law, §§ 110-114, are entirely his work.

EDWARD GRENVILLE BENEDICT.

New York, March 1, 1910.

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THE AMERICAN ADMIRALTY.

CHAPTER I.

GENERAL VIEW.

§ 1. Commercial Causes.

As commerce has increased, so the laws regulating its transactions, and prescribing the rights and duties of its agents, and the proper jurisdiction of commercial tribunals, have increased in importance. Not the least important of commercial causes are those connected with maritime commerce, which so often brings together, in interest and in conflict, the people of different nations, speaking different languages, and familiar with different codes and usages. Most especially is this true in our country, where, from the peculiar form of our institutions, there are two governments, with separate and independent judicial establishments extending over the same territory and the same individuals; that territory acquired from other nations and originally subject to their laws, and those individuals consisting, in large part, of the citizens and subjects of the other great commercial nations of the world, domiciled among us.

§ 2. Maritime Affairs.

The character and pursuits of seafaring life, and of maritime commerce, have in all countries been considered as of a peculiar nature. Their agents and instruments, animate and inanimate, have rights, privileges, and liabilities which do not belong to those of the land, and there are rules of conduct and of intercourse, as well as courts of justice, codes of law, and modes of administering them, which are especially devoted to the relations of maritime affairs. The ships of a nation, wherever they may be, are considered as a part of its territory;¹ hence the encouragement of navigation and maritime com-

¹The *Scotia*, 14 Wall. 170; *Crapo v. Kelly*, 16 Wall. 610; *Wilson v. McNamee*, 102 U. S. 572. *The Hamilton*, 207 U. S. 398; *In re Ah Sing*, 13 F. R. 286; *In re Moncan*, 14 F. R. 44; *Int. Nav. Co. v. Lindstrom*, 123 F. R. 475; *McDonald v. Mallory*, 77 N. Y. 546; *Wheat*, *Int. Law*, § 106; 3 *Whart. Int. Law Dig.* 228; *Whart. Conflict of Laws*, § 356; *Seagrove v. Parkes*, 12 B. Div. 551.

merce, and the proper regulations and employment of ships, have always been favorite objects of the laws of all commercial nations.²

§ 3. The Admiral.

In the earlier history of nations, in which absolute rule and strong executive powers have exercised most of the functions of government, the affairs of the sea, so far as the nation was concerned, and of the navigable waters of the nation, have been usually administered by a naval officer of the highest dignity and station, holding his authority directly from the sovereign power, subordinate to the monarch alone, and clothed with many of the prerogatives of royalty. Almost all nations, possessed of any maritime commerce, have thus had an officer, known sometimes by one name and sometimes by another in a greater or less degree similar to the English word *admiral*.³ Originally, admiralty jurisdiction was but another phrase for the power of the admiral. The mild and equitable system of admiralty law derives its descent, through a long line of modifications and meliorations, from the absolute and irresponsible rule of naval command, as the peaceful law of real estate, and the common law generally, have descended from the iron despotism of military dominion carried to its perfection in the feudal system.⁴

§ 4. Admiralty Law.

The declaration of the great Roman orator, *cedant arma togæ*, uttered when Rome was the military mistress of the world, was then true only in the forum; the lapse of eighteen centuries has made it the law of society and the truth of history wherever civilization has shed its light on organized government. The administration of the law of the sea has passed into the hands of properly constituted courts of justice, while the admiral has been left in possession of the power

² Zouch's Jurisdiction of the Admiralty, Ass. 1, id. Ass. 9; 2 Bro. Civ. & Ad. Law, chap. 2; 3 Kent's Com. 1-21; Edw. Ad. Jur. 33; Abbott on Ship. 98.

³ Fuller in his "Worthies of England," Vol. I, p. 26, says "much difference there is about the original of this word, whilst most probable is their opinion who make it of Eastern extraction, borrowed by the Christians from the Saracens. These derive it from *Amir*, in Arabic a *Prince*, and *'Alios*, belonging to the sea, in the Greek language; such mixture being preceded; in other words * * * Admiral is but a depraving of Amiral in vulgar mouths. However it will never be beaten out of the heads of the common sort, that, seeing the sea is a scene of wonders, something of wonderment hath incorporated itself in this word and that it hath a glimpse, cast or eye of admiration therein."

⁴ Hall's Ad. Intro. 7, 8; Godolphin's View of the Admiral Jurisdiction, chaps. 1, 2; Zouch, Ass. 2, 3.

and prerogatives of naval command alone, and has become judicially subject to the courts, which exercise, with less show, more quietly and usefully, the functions which he considered his most homely attributes. The system of law which is thus administered in maritime transactions, retains the name of admiralty law, after the name and power of the admiral have ceased to be known in its execution. As maritime commerce came to be extended, and international commerce and intercourse became more frequent, the sea was considered the common highway of nations, where, for the purposes of business, all nations must be equal in right, and the common convenience, as well as the common right, rendered necessary and ultimately established general rules, as the Law of the Sea, to which all submitted as to a sort of maritime law of nations, and the courts of each nation enforced it. This is now called the general maritime law, and sometimes the general admiralty law. It is always administered by courts of nations, belonging to the family of nations.

But it should be borne in mind that this general maritime law may be subject to change in different countries. And to use the language of the Supreme Court of the United States "thus adopted and thus qualified in each case, it becomes the maritime law of the particular nation that adopts it."⁵

§ 5. The Civil Law.

The admiralty law is indebted for many of its characteristics to the circumstances of the countries in which it was first administered. The countries that earliest reduced the law of the sea to a system, and adopted codes of maritime regulations, having been countries in which the Roman or civil law prevailed, the principles of that great system of jurisprudence were incorporated with, and gave character to, the maritime law; and so much were pure reason, abstract right, and practical justice mingled in that system, and so important was it that the general maritime law should be uniform and universal, that, in England, where the common law was the law of the land, the civil law was held to be the law of the admiralty, and the course of proceedings in admiralty closely resembled the civil law practice.⁶

§ 6. Former Jealousy of Common Law Courts in England.

A court thus proceeding according to the course of the civil law,

⁵ See the discussion of this subject in the case of the *Lottawanna*, 21 Wall. (88 U. S.) p. 572 to 578. The courts of the United States are not bound by the maritime usages of foreign countries. The *Elfrida*, 172 U. S. 186.

⁶ 2 Bro. Civ. and Ad. Law, 348.

and without a jury, in England, was looked upon with jealousy by the judges of the courts of common law, who considered themselves the proper judicial guardians of English subjects. They professed to look upon the admiralty as an intruder, administering a foreign code, and, under a pretence of justice, seeking to steal away the hearts of the people from the trial by jury, and the sterner proceedings of the common law; and a concerted and vigorous effort was made to deprive the Court of Admiralty of a large portion of the jurisdiction which it exercised; and the jurisdiction of that court was for a long time a vexed question. The bench and the bar, on both sides, were characterized by great learning and talent, and the contest was managed with much ability. It is not easy, now, to see how a candid mind could fail to yield to the argument of the admiralty judges. The numerical strength, however, of the party of the common law, was vastly superior to the other, and was led by Sir Edward Coke, then Chief Justice of the King's Bench, as overbearing as he was learned; and as that court was superior to the Court of Admiralty, and had the power to control its proceedings by the writ of prohibition, it is easy to see that what the common law lacked in right, was more than made up in might, and the result could not long be doubtful. The jurisdiction of the admiralty was judicially contracted to the narrowest limits in that country, and, with some fluctuation, remained so till, in the nineteenth century, statutes again extended it in a most beneficial manner.⁷

§ 7. Early Influence of English upon American Jurisdiction.

The contest between the two jurisdictions in England, and the triumph of the common law, came over to us in the English books, and in the earlier years of the jurisprudence of this country did much to create in the minds of American lawyers, a prepossession in favor of the narrower jurisdiction of the English Admiralty, and occasionally, lawyers and judges of the most distinguished ability, sought to transfer the English argument and authority to our country, and insisted that the American admiralty was confined to the exercise of those powers which necessity had compelled the King's Bench, in the days of its most arrogant triumph, to tolerate in England.

§ 8. Early Doubts as to Broad Jurisdiction.

Among the distinguished jurists who insisted that the grant in the

⁷ Zouch, *passim*; Godolphin, *passim*; Prynne's Animadversions, *passim*; Waring v. Clarke, 46 U. S. (5 How.) 453; The Jerusalem, 2 Gal. 348; Edwards' Ad. Juris. 17; 3 and 4 Vict. c. 65; 9 and 10 Vict. c. 99; 17 and 18 Vict. c. 104; 24 Vict. c. 10; 31 and 32 Vict. c. 71.

constitution embraced only those few cases of admiralty and maritime jurisdiction which were admitted by the English common lawyers, at the time of our Revolution, to be within the jurisdiction of the English admiralty, was Chancellor Kent, who said "the argument for the extension of the civil jurisdiction of the admiralty beyond the limits known and established in the English law, at the time of the formation of the constitution, is not free from great difficulty."⁸ And decisions, arguments, and judicial dicta, abounded in our reports, on both sides of the general question and of many of its subordinate points, which for long served to keep the whole question open. The question of the limit of the jurisdiction of the American admiralty has been considered many times by the Supreme Court, and the broad jurisdiction which exists at the present day was slowly declared until it is now well settled and no longer questioned.⁹

⁸ 1 Kent's Com. 371, 377; *Ramsey v. Allegre*, 25 U. S. (12 Wheaton) 611; *Bains v. The James and Catherine*, Baldwin's Rep. 544; *Waring v. Clarke*, 46 U. S. (5 Howard), 441; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 47 U. S. (6 Howard), 344, 385; Const. 3, § 2; Jud. Act of 1789, § 9; Rev. Stat. § 563.

⁹ Since the first edition of this work was published in 1850, the jurisdiction of the American admiralty has been investigated in the Supreme Court of the United States, in the following cases:—

The Genesee Chief v. Fitzhugh, 53 U. S. (12 How.) 443; *Jackson v. The Magnolia*, 61 U. S. (20 How.) 296; *People's Ferry Co. v. Beers*, id. 393; *Nelson v. Leland*, 63 U. S. (22 How.) 48; *Roach v. Chapman*, id. 129; *Phila. Wil. etc. R. R. Co. v. Phila. and Havre de Grace Steam Tugboat Co.*, 64 U. S. (23 How.) 209; *Morewood v. Enequist*, id. 491; *The St. Lawrence*, 66 U. S. (1 Black) 522; *The Commerce*, id. 574; *The Potomac*, 67 U. S. (2 Black) 581; *The Plymouth*, 70 U. S. (3 Wall.) 20; *The Moses Taylor*, 71 U. S. (4 Wall.) 411; *The Hine v. Trevor*, id. 555; *The Eddy*, 72 U. S. (5 Wall.) 481; *The Rock Island Bridge*, 73 U. S. (6 Wall.) 213; *The Belfast*, 74 U. S. (7 Wall.) 624; *The Eagle*, 75 U. S. (8 Wall.) 15; *The Daniel Ball*, 77 U. S. (10 Wall.) 557; *Ins. Co. v. Dunham*, 78 U. S. (11 Wall.) 1; *The Montello*, id. 411, and 87 U. S. (20 Wall.) 430; *Norwich Co. v. Wright*, 80 U. S. (13 Wall.) 104; *Atkins v. The Fibre Dis. Co.*, 85 U. S. (18 Wall.) 272; *Schoonmaker v. Gilmore*, 102 U. S. 118; *Ex parte Gordon*, 104 U. S. 515; *Ex parte Boyer*, 109 U. S. 629; *The Belgenland*, 114 U. S. 355; *Ex parte Phoenix Co.*, 118 U. S. 610; *The Harrisburg*, 119 U. S. 199; *Butler v. B. & S. S. S. Co.*, 130 U. S. 527; *The Eclipse*, 135 U. S. 599; *The Max Morris*, 137 U. S. 1; *The J. E. Rumbell*, 148 U. S. 1; *Belden v. Chase*, 150 U. S. 674; *The Haytian Republic*, 154 U. S. 118; *Moran v. Sturges*, 154 U. S. 256; *The Beaconsfield*, 158 U. S. 303; *The Delaware*, 161 U. S. 459; *The Glide*, 167 U. S. 606; *The John G. Stevens*, 170 U. S. 113; *The Elfrida*, 172 U. S. 186; *Smith v. Burnett*, 173 U. S. 430; *The New York*, 175 U. S. 187; *The Albert Dumois*, 177 U. S. 240; *Workman v. New York City*, 179 U. S. 552; *The Barnstable*, 181 U. S. 464; *Tucker v. Alexandroff*, 183 U. S. 424; *The Roanoke*, 189 U. S. 185; *The Robert W. Parsons*, 191 U. S. 17; *The Blackheath*, 195 U. S. 361; *Erie R. R. Co. v. Erie Trans. Co.*, 204 U. S. 220; *The Winnebago*, 205 U. S. 354; *The Hamilton*, 207 U. S. 398; *Cleveland T. R. R. Co. v. Steamship Co.*, 208 U. S. 316; *The Troy*, 208 U. S. 321; *La Bourgogne*, 210 U. S. 95.

CHAPTER II.

JURISDICTION.

§ 12. Jurisdiction Generally.

Jurisdiction, as applied to courts, is the right to hear and determine judicially the subject-matter in controversy between parties to a suit or legal proceeding. The action of a court is either judicial or extra-judicial. If the law confers the power to render a judgment or decree in a case, then the court has jurisdiction, and its action is judicial. If the law does not confer such power, then the action of the court therein is extra-judicial. It has not jurisdiction.¹

§ 13. Its Source.

The jurisdiction of courts is a branch of that jurisdiction which is possessed by the nation as an independent power. The jurisdiction of the nation within its own sphere is necessarily exclusive and absolute. It is susceptible of no limitation not conferred by itself; any restriction upon it, deriving validity from another source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty, to the same extent, in that power which would impose such restriction. All exceptions, therefore, to the full and complete power of a nation within its own territory, must be traced up to the consent of the nation itself. They can flow from no other legitimate source.²

§ 14. Judicial Power of the United States.

The judicial power of the United States is limited, and, of course, all the courts of the United States are of limited jurisdiction, limited by the grant of judicial power in the constitution, and by the acts of Congress distributing that jurisdiction to the courts. The action of those courts extends and must be confined to the cases, controversies, and parties over which both the constitution and the laws

¹ *The State of Rhode Island v. The State of Massachusetts*, 37 U. S. (12 Pet.) 657.

² *The Exchange v. McFaddon*, 11 U. S. (7 Cranch), 136.

have authorized them to act. As any proceeding is within or without the limits thus prescribed, it is or is not judicial, valid, and effectual. The constitution and the statute must both concur in conferring jurisdiction. The judicial power of the government is derived from the constitution. The disposal and distribution of it belongs to Congress. Many subjects of jurisdiction, which are clearly embraced in the constitution, lie actually dormant, because Congress has never authorized their exercise by any of the courts.³ In like manner, Congress has sometimes conferred powers which the constitution has not authorized them to confer, and so far the act of Congress is void.

§ 15. Limitations of Judicial Power.

The judicial power of the United States may be limited to *places*, to *parties*, or to *subjects*, of a particular kind or character.

Place.—There are a variety of cases, offences, and controversies, which are within the jurisdiction of certain courts, simply because they happen or are committed in particular places. An offence may be committed in a fort, arsenal or dock-yard of the United States, or on the high seas: it is then, by reason of the place alone, subject to the jurisdiction of the courts of the United States. In such cases, jurisdiction depends on *place* alone.

Parties.—The judicial power of the United States extends to all cases affecting ambassadors and other public ministers and consuls, and to cases in which the United States, a state or an alien is a party. In such cases, the jurisdiction depends solely upon the *person* or *party*.

Subject-Matter.—In other cases jurisdiction is confined to subjects of a particular character. Subject-matter is as various as the law itself, embracing anything which properly comes within the sphere of legislation, crimes and punishments, natural and social relations, contracts, obligations, duties, rights and wrongs; these are distributed among different tribunals, as the convenient administration of justice may require. Hence there are civil courts and criminal courts; ecclesiastical, military, and testamentary courts; courts of equity, of revenue, of international law,—and courts of admiralty and maritime jurisdiction. Such courts have jurisdiction of their

³The State of Rhode Island v. The State of Massachusetts, 37 U. S. (12 Pet. Rep.) 657; Voorhees v. The Bank of the United States, 35 U. S. (10 Pet.) 449; 1 Kent Com. 314; Turner v. The Bank of North America, 4 U. S. (4 Dal.) 8; McIntire v. Wood, 11 U. S. (7 Cranch), 504; Smith v. Jackson, 1 Paine, 486.

respective classes of cases, not by reason of the place where they arise, nor of the persons who may be parties to them, but by reason of the *subject-matter of the controversy*.⁴

§ 16. Power and Duty of a Court.

Whenever a court has jurisdiction of a controversy, whether it depend on place, party, or subject-matter, it has the power, according to its own course of procedure, to administer justice between the parties, so far as that controversy extends. If it be a court, and have jurisdiction, then, from the very force of these terms, it has the power necessary to enable it fully to adjudicate between the parties, and to enforce its decree. If it have power over the principal matter, it has it also over the incidents. If it have power to begin, it has power to finish, although in its course it may be called upon to consider and decide matters, which, as original causes of action, would not be within its cognizance.⁵

The duty of a court is commensurate with its power. It is as much the duty of a court to exercise jurisdiction where it is conferred, as not to usurp it where it is not conferred.⁶

§ 17. Political and Judicial View of Jurisdiction.

A peculiarity of our form of government compels us to look at the question of jurisdiction of the courts of the United States, in two points of view, the political and the judicial. The political view of the question involves the inquiry as to what is the extent of the constitutional grant to the Government of the United States, as a national political sovereignty, separate and distinct from the state governments. This question arises before and independently of all courts and their organization, and depends upon the constitution alone. It was the question which was presented to the first Congress that met under the constitution, when they came to provide for the judicial wants of the new government by organizing courts to exercise the judicial power conferred on that government. The judicial view involves only the question as to the extent of the legal jurisdiction of the tribunals created by Congress, and upon which it bestowed the power to exercise certain judicial powers of the national govern-

⁴ *Bank of the U. S. v. Deveaux*, 9 U. S. (5 Cranch), 61.

⁵ *Bank of the U. S. v. Deveaux*, 9 U. S. (5 Cranch), 61; *Peck v. Jenness*, 48 U. S. (7 How.) 612; *The American Ins. Co. v. Johnson*, Blatchford & H. 9; *The Epsilon*, 6 Ben. 378. See *post*, § 143.

⁶ *The St. Lawrence*, 66 U. S. (1 Black,) 522.

ment. The constitutional grant to the nation was fixed and inflexible the moment the constitution was adopted. On the other hand, the organization and jurisdiction of the courts, and the distribution of judicial powers, was left to Congress, and has been always subject to such changes as the wants or the wisdom of successive periods might from year to year suggest. Thus, the question of the American Admiralty jurisdiction is not a question, as in England, between a court of admiralty and a court of common law (for there is no court of admiralty proper in this country, nor is there any common law of the United States, except the common law enunciated in interpreting the Constitution of the United States⁷), or between trial by jury and trial by a judge; but it is only a question between the national government and the state governments. If it had always been considered in this light, the argument would have been found to turn upon considerations widely different from many of those which have been presented, and much of the difficulty which has been encountered on the subject would have vanished away. It is in this point of view that we shall first consider it, inasmuch as upon this everything else depends. After that will be considered the less difficult question as to what may be the proper court. If any controversy belongs to the judicial cognizance of the United States Government, there can be no doubt or difficulty in ascertaining which of its tribunals must decide it.⁸

§ 18. Constitutional Grant of Jurisdiction.

The Constitution of the United States grants to the Federal Government, judicial power over “*all cases of admiralty and maritime jurisdiction.*” This is the whole of the grant of that branch of judicial power; and, brief and simple as it is, upon its true construction depends the whole of the American Admiralty jurisdiction. It has received five different constructions. It has been contended—

1. That this constitutional grant embraces only those few cases of which the English High Court of Admiralty was permitted to take cognizance, at the time of the American Revolution.

2. That it embraces all cases of which the English Admiralty

⁷ *Smith v. Alabama*, 124 U. S. 465; *West. U. Tel. Co. v. Call Pub. Co.* 181 U. S. 92; *Swift v. Phil., etc., R. R. Co.*, 64 F. R. 59.

⁸ Const. Art. 3, § 2; *Wheaton v. Peters*, 33 U. S. (8 Pet.) 591; *The State of Rhode Island v. The State of Massachusetts*, 37 U. S. (12 Pet.) 657; *The U. S. v. Hudson*, 11 U. S. (7 Cranch), 33; *The Genesee Chief*, 53 U. S. (12 Howard), 443.

anciently had jurisdiction, before the common law courts had by prohibition prevented the exercise of most of its powers.

3. That it embraces only the cases which were within the acknowledged competency of the British colonial courts of vice-admiralty, as they existed at the time of the American Revolution.

4. That it embraces only such cases as were within the actual jurisdiction of the state courts of admiralty, which were in existence prior to the adoption of the Constitution of the United States in 1788.

5. That the words *admiralty* and *maritime* relate simply to subject-matter, and were used in that general sense which embraces all those cases relating to ships and shipping, and maritime commerce, which arise under the municipal maritime regulations of each nation, and those which arise under the general maritime law.* This is the construction which has been finally adopted as the law of the land.

* *Waring v. Clarke*, 46 U. S. (5 How.) 441, 473.

CHAPTER III.

CONSTITUTIONAL CONSTRUCTION.

§ 19. The Constitution.

The constitution is to be construed according to the obvious import of its own phraseology. We cannot, by evidence from other sources of the views or intentions of individuals, in framing or adopting that instrument, divert the language from its plain import. The intention of a people, or of a popular body, can be known only from their corporate acts, or from the results in which the whole, by the legal majority, concur.

The constitution was fully discussed, in the convention and before the people, and there is no evidence that the people or their representatives did not understand the constitution as it is written. Emanating from the people, its powers are granted by them, and it is the highest evidence of their will and intention. Most especially is this so, since the constitution, in the whole and in its parts, was the result of compromises. The views of no party were there embodied, nor were the intentions of any set of men there carried out; but, after full discussion and long deliberation, from patriotic motives, all yielded to it, and it was adopted as it was written, declaring "We, the people of the United States, do ordain and establish this constitution."¹

§ 20. Its Grant of Judicial Power.

Its grants of judicial power, as well as of political sovereignty, are brief, sententious, and comprehensive. None of its words are to be disregarded, as without meaning, nor to be considered as used to round a period, or to give fullness and euphony to a sentence. Its phraseology was most carefully chosen, and all its words are significant, and introduced for the purpose of conveying their appropriate shades of meaning.²

¹ Constitution, Preamble; *Martin v. Hunter's Lessee*, 14 U. S. (1 Wheat.) 304; *Gibbons v. Ogden*, 22 U. S. (9 Wheat.) 1; *Mad. Pap.* 1593-1604; *Aldridge v. Williams*, 44 U. S. (3 How.) 9; *Waring v. Clarke*, 46 U. S. (5 How.) 441; *Story on Const.* 135; *Livingston v. Van Ingen*, 9 Johns, 576.

² *The State of Rhode Island v. The State of Massachusetts*, 37 U. S. (12 Pet.) 657, and cases cited.

§ 21. The Constitution is Organic Law.

The constitution has indeed the force of law, but it is also still higher than a law, in the usual sense of that word. It is an organic law, made by the people, and not by the legislature. In a few brief sections it establishes the frame of government, and fixes the general relations and inflexible guards of political society for a great nation, for successive ages. It is necessarily brief in its language, but far reaching and comprehensive in all its provisions. It was not intended to settle details, enumerate instances, or explain by illustration; but to establish principles, describe outlines, and fix the landmarks of political power, in such general manner, as to provide for an unknown future, and the circumstances of a territory destined to be indefinitely extended.³

§ 22. Grants not Restrictions.

It is a constitution of grants, and not of restrictions; grants made under peculiar circumstances, and for characteristic purposes. In this it differs from other constitutions. They are limitations or restrictions of that universal sovereignty or governmental omnipotence, which belongs to an independent state, and which makes the state, however organized, the irresponsible master of the life, liberty, property, and conduct of the individual, except so far as the state has voluntarily limited its power.⁴

§ 23. Constitutions of the States.

Of this latter class, were the constitutions of the individual states, before the Federal Constitution was formed. The American Revolution commenced in rebellions of separate colonies bounded on the great common highways of national intercourse. For a common purpose, they consulted and combined together and, in 1776, declared themselves "free and independent states." They then separately, as members of a confederate nation, each in its own manner, adopted forms of state government, under which, as separate states, they had all the functions of good government, subject to the limitations and grants of the national confederation, which unified their nationality. The prerogatives of the Crown and the transcendent power of Parlia-

³ *McCulloch v. The State of Maryland*, 17 U. S. (4 Wheat.) 316; Const. Preamble; id. Art. 4, § 3.

⁴ *The State of Rhode Island v. The State of Massachusetts*, 37 U. S. (12 Pet. Rep.) 657; *The U. S. v. Hudson*, 11 U. S. (7 Cranch), 33; *Livingston v. Van Ingen*, 9 Johns, 574; *Martin v. Hunter's Lessee*, 14 U. S. (1 Wheat.) 304.

ment, all elemental and ultimate national supremacy, devolved upon the states and the people thereof, in a plenitude unimpaired by any act, and controllable by no authority. Each state was in itself, and as to its own powers, an independent government, and foreign to the other states of the union, as well as to other nations. It was competent for the people of the states, thus to create, by common consent, a general government, and to invest it with all the powers which they might deem proper and necessary; to extend or restrain those powers according to their own good pleasure; and to give them a permanent and supreme authority.⁵

§ 24. The Articles of Confederation and the Constitution.

For mutual aid, these states, in 1777, formed articles of perpetual union of feeble character, known as the Articles of Confederation, limiting the powers of the states. And finally, in 1789, to form a more perfect union, and especially to establish justice, the present "Government of the United States" was formed by the Constitution of the United States, and to it was granted, by that instrument, a portion only of the powers previously existing in the states and the people thereof. It had been a "league": it was made a "government." It was a government made by taking from the states, and the people thereof, and transferring to the United States, and the people thereof, certain portions of sovereignty.⁶

It took from the states all their powers of national sovereignty: "No state shall enter into any treaty, alliance, or confederation;" "No state shall grant letters of marque and reprisal;" "No state shall coin money;" "No state shall emit bills of credit;" "No state shall make anything but gold and silver a tender in payment of debts;" "No state shall pass any bill of attainder;" "No state shall pass any *ex post facto* law;" "No state shall pass any law impairing the obligation of contracts;" "No state shall grant any title of nobility;" "No state shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws;" "No state shall, without the consent of Congress, lay any duty of tonnage," "nor keep troops or ships of war in time of peace," "nor enter into any agreement or compact with another state, or with a foreign

⁵ *Martin v. Hunter's Lessee*, 14 U. S. (1 Wheat.) 304; *Livingston v. Van Ingen*, 9 Johns, 575.

⁶ *The State of Rhode Island v. The State of Massachusetts*, 37 U. S. (12 Pet. Rep.) 657; *The U. S. v. Hudson*, 11 U. S. (7 Cranch), 33.

power." All these are characteristic, elemental rights of sovereignty: without all of them, no state can properly be called sovereign, and yet no state of this union has one of them. All these, with many other great powers of national sovereignty, of which it is necessary to specify here only "the power to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," and the judicial power, embracing "all cases of admiralty and maritime jurisdiction," are granted to the United States.

§ 25. Grants of the Constitution.

Some of these grants convey elemental powers of government in all their fullness and force, while others are conveyed in a modified and restricted form. They were grants by governments already organized, and possessing and actually exercising sovereignty, unlimited except by the few restrictions of their articles of perpetual union. They were made by the "People of the United States," but not by the people as a primary and unorganized mass solely, but by the people already formed into regular communities, and acting through or under their established constitutions; they were thus direct grants by the people of those primitive powers, which, on the theory of our government, are supposed to emanate from the people, and they were also grants, by established popular governments, of powers constituting a part of their own acknowledged functions; and while they were the act of the constituted authorities, in the name of the people, they were also ratified by the people, as the ultimate source of political power. They are therefore, all of them, to their proper extent, and for the accomplishment of their proper purpose, of the most uncontrollable and irresistible character, and they are without any limit, except such as is prescribed by the constitution itself. Thus, the power of peace and war, of international negotiation, of coinage, the judicial power over all cases affecting ambassadors, and over all cases of admiralty and maritime jurisdiction, and others, are transferred to the general government, free from all restriction and limitation.⁷

§ 26. Its Purposes and Powers.

All the powers in the constitution were conferred upon the general government for purposes expressed in the constitution, in view of which purposes they are respectively to be construed. The consti-

⁷ *McCulloch v. The State of Maryland*, 17 U. S. (4 Wheat.) 316; Const. Art. 1, §§ 8, 10; *id.* Art. 3, § 2.

tution was made by the people of the United States “*to form a more perfect union, establish justice, ensure domestic tranquillity, provide for the common defence, promote the general welfare, and secure the blessings of liberty, to them and their posterity.*” Its grand purpose was to *unify* the whole in the relations of internationality, and all its minor purposes were subordinate and ancillary to this. Its grants, therefore, consist of great classes of powers. Those powers which should especially regulate our intercourse with foreign nations and their subjects, with the states and their citizens, and those in the exercise of which we were ourselves to be emphatically one people, and to be clothed with equal rights, although in other and municipal respects we were to remain members of different communities, were granted to the general government wholly and absolutely, in order that our intercourse with foreign powers might be so regulated as to make us one of the great family of nations, acknowledging the laws and respecting and adopting the usages which constitute the rule of international intercourse, and to prevent the separate states from making inconstant and conflicting laws, and destroying the harmony which could alone make us, and keep us a nation, the United States.*

§ 27. Its Grants of Judicial Power.

This is especially evident in the constitutional grants of judicial power. They are not grants to this or that court of the United States. The constitution does nothing but draw the line between the cases which belong to the United States Government and those which belong to the state governments. It transfers from the states and the people of the states to the general government, the judicial sovereignty in great national classes of cases, to be exercised by such courts, and in such manner as the Congress of the newly created government should provide. When the constitution was made, there were no courts of the United States of any sort, nor was it certain that there would be here (as there never has been) a purely admiralty court; but it was certain that in the multifarious transactions on the ocean, seas, lakes, and rivers, which were to be the highways of our intercourse and commerce between the several states and the various nations of the world, questions might continually arise, where the law of nations and the law of maritime commerce, the maritime law of the world, ought to take the place of the numerous conflicting

* Const. Preamble, Art. I, §§ 8, 9, 10: *id.* Art. 3, § 2, Art. 4; *Martin v. Hunter's Lessee*, 14 U. S. (1 Wheat.) 316, 335, 347, 348; *Story's Commentaries*, § 1672; *The Moses Taylor*, 71 U. S. (4 Wall.) 411, 430.

might be avoided; and in the constitution itself everything is studiously omitted, which might even recall to mind those institutions. The common law of England has never been by adoption, by inheritance, or by re-enactment, the law of the United States, although it has been of some of the states.”¹³

§ 31. Force of Terms in the Constitution.

Our constitution and laws are written in the English language, and, of course, to that language we must look for the proper meaning and force of their terms; and this is the only link that connects the laws and institutions of the general government with those of any other nation. When, therefore, the constitution or the laws make use of the words *equity, common law, admiralty, maritime law, civil law, trial by jury, felony, etc.*, it is to the English law and to English dictionaries, that we must resort for the meaning of those terms; but it by no means follows that we must look to the same source for the structure and jurisdiction of our national courts or for the rules of decision which they are to follow. The force of a common language, even, added to that of our historical connection, was altogether too feeble, properly, to give to our new-made and original political institutions any transatlantic odor, much less to characterize them by strong English analogies.

§ 32. The Admiralty Jurisdiction Granted in the Judicial Power.

In view of these considerations, it may be further observed that the grant in the constitution of admiralty and maritime jurisdiction is confined solely to the judicial power, properly so called. “The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the congress may from time to time establish.” “The judicial power shall extend . . . to all cases of admiralty and maritime jurisdiction.” The admiral, in many countries, had numerous powers, duties, and rights, which sprang from and related to his military or naval character, and to his dignity and station as a high executive officer clothed with many of the prerogatives of royalty, and had no reference to his judicial character. He was a high naval commander, and nothing else; a commander-in-chief, subordinate only to the king; and some of his mere perquisites and privileges have been subjects of the jurisdiction of the admiralty

¹³ The *Amiable Nancy*, 1 Paine, Rep. 111; *Mad. Pap. passim*; *Wheaton v. Peters*, 33 U. S. (8 Pet.) 591; *The U. S. v. Hudson*, 11 U. S. (7 Cranch), 32; *Manro v. Almeida*, 23 U. S. (10 Wheat.) 473.

court. All those portions of the power of the admiral, which may be properly called executive or administrative, are unknown to the American Admiralty. The trappings, perquisites, prerogatives, and *droits* of the admiralty are left to governments with which they are in harmony, and only a purely judicial function, to be exercised only in cases of maritime character, between party and party, by judges and courts, and not by the admiral nor his deputies, was thus granted to the United States, in the simplest and most comprehensive language. It provides for nothing but "*cases*" in courts.¹⁴

§ 33. Without Limitation.

As it embraces nothing but cases, so it embraces *all* cases of admiralty and maritime jurisdiction: nothing can be more full, simple, clear, and unquestionable than the words of the grant, "*all cases*." It is subject to neither condition, exception, nor limitation.

§ 34. Subject-matter of Case Fixes Jurisdiction.

There are two classes of cases granted to the Federal Judiciary. In one, the nature of the case is everything, and the character of the parties nothing; in the other, the character of the parties is everything, and the nature of the case nothing, a distinction springing naturally out of the purpose and character of the constitution, to which allusion has already been made. "All cases affecting ambassadors and other public ministers and consuls;" "Controversies between citizens of different states," etc.: in these, everything depends upon the character of the parties. "All cases in law and equity arising under this constitution;" "All cases of admiralty and maritime jurisdiction:" in these, everything depends upon the nature of the case, the subject-matter of the suit, and nothing upon the character of the party.¹⁵

§ 35. All Words in the Grant are Significant.

We are not at liberty to say that in an instrument so well considered and so carefully drawn, any words are not significant; much less can we reject such a word as *all*, or deprive it of its proper significance. It cannot be construed to mean a small, unspecified and debatable portion. Nor can we add a condition or limitation to it. All cases of law and equity *arising under this constitution*, etc., all cases *between citizens*, etc., all cases *affecting ambassadors*, etc.—in these clauses, limitations are carefully inserted; and as cautiously they are

¹⁴ *Cohens v. Virginia*, 19 U. S. (6 Wheat.) 264; *Chisholm Exr. v. Georgia*, 2 U. S. (2 Dal.) 419.

¹⁵ See *post*, §§ 142, 181; *Cohens v. Virginia*, 19 U. S. (6 Wheat.) 264.

omitted in the one under consideration. It would have been easy to say "all cases of which the Court of King's Bench in England shall permit the English High Court of Admiralty, from time to time, to take jurisdiction," if it had been intended to leave a portion of our legislative and judicial power to be exercised as regulated in Great Britain through all time.¹⁶ But it did not do so: it granted to the United States jurisdiction of *all* cases of admiralty and maritime jurisdiction.

¹⁶ *Waring v. Clarke*, 46 U. S. (5 How.) 441.

CHAPTER IV.

ADMIRALTY AND MARITIME LAW.

§ 36. The Term "Admiralty."

The word *admiralty*, in the constitution, cannot be deprived of any of its proper force.¹ The word is of frequent use in the maritime systems of many countries, and refers especially to that class of cases which originally came within the proper cognizance of the admiral. It is not necessary here to repeat the ingenious and fanciful etymologies of the word, nor even the more sound and rational ones. It is sufficient to say, that they are but so many modes of showing the relation between the title of the officer and his duties. Godolphin devotes the first chapter of his View of the Admiral Jurisdiction to "the etymon or true original of the word, with the various appellations thereof," in which, and the authorities there cited, the curious will find all they desire.²

§ 37. Functions of the Admiral.

Every maritime nation has certain rules or laws in relation to ships, shipping, and maritime matters, which are peculiar to itself; such as its navigation acts; the municipal regulations of its harbors, creeks, and bays, and navigable rivers, and of its own vessels; its rules in relation to wrecks, obstructions in rivers, prohibited nets, royal fisheries, and other *droits* of the admiralty, constituting its maritime police. These were originally enforced by the admiral, exercising in part a high executive and administrative function, which was a portion of the royal prerogative, and was, in substance, confined to the waters and the vessels of his own nation. The admiralty court was the forum through which, and by the aid of whose process, when necessary, these local municipal and administrative laws were enforced, and their violators punished. These are, properly, the admiralty law of any country. Cases arising under these laws, are cases of purely admiralty jurisdiction. Each nation has its own

¹ *Ante*, § 20.

² Godolphin, chap. 1.

system of admiralty law, which it changes and modifies at pleasure.³ It has been remarked, that the mere executive functions of the admiral, his prerogatives and perquisites, have no existence here.⁴

§ 38. The Term "Maritime."

The word *maritime* is also to have its appropriate meaning, i. e., relating to the sea. The words *admiralty* and *maritime*, as they are used in the constitution and acts of Congress, are by no means synonymous, although able lawyers, on the bench, as well as at the bar, seem sometimes to have so considered them. They were evidently both inserted to preclude a narrower construction, which might be given to either word, had it been used alone.⁵ The English Admiralty had jurisdiction of all cases arising beyond sea, although not maritime in their character. These are excluded by the use of both terms.

§ 39. Maritime Cases.

Maritime cases are more properly those arising under the maritime law, which is not the law of a particular country, and does not rest for its character or authority, on the peculiar institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade, which general convenience and a common sense of justice have established in all the commercial countries of the world to regulate the dealing and intercourse of merchants and mariners, in matters relating to the sea.⁶

§ 40. The Maritime Law the Rule of Decision.

This maritime law does not in the least depend upon the court in which it is to be administered, but furnishes the proper rule of decision in cases to which it applies, no matter in what court they may be brought; and it has, in fact, been administered in different countries, in different courts, each constituted in its own manner; some called Admiralty Courts, some Maritime Courts, some Consular Courts, some

³ *Ante*, § 4.

⁴ *Ante*, §§ 3, 4; *post*, § 41; Laws of Oleron, 35-47; Laws of Hanse Towns, Art. 1; Mar. Ord. Fran. Lib. 1, *passim*; Nav. and Rev. Laws U. S.; Pardessus Loix Mar. *passim*; Godolphin, 43; Zouch, 1-28; Sea Laws, 51, 54.

⁵ Rev. Stat. § 563, subd. 8; *Martin v. Hunter's Lessee*, 14 U. S. (1 Wheat.) 304, 335; *Cohens v. Virginia*, 19 U. S. (6 Wheat.) 264; *Thackeray v. The Farmer, Gilp*, 528; *The State of Rhode Island v. The State of Massachusetts*, 37 U. S. (12 Pet.) 657, 744; *ante*, § 21.

⁶ 3 Kent Com. 3 edit. 1; Laws of Oleron, Art. 14, 15; Laws of Wisbuy, Art. 26, 27; Marine Ord. of France; Roccus, *Introd.*; Pardessus Loix Mar.; 2 Valin, 177, 188; Consulat, 18; Godolph. 43, 155; Zouch, Ass. 9; Sea Laws, *passim*; Malynes, 110; Zouch, Ass. 6.

Tribunals of Commerce. In England, the Court of Admiralty and the Court of Chancery especially enforced it, while truth was required in pleading; but when, by the use of a fictitious venue, the facts might be laid as occurring in London, the King's Bench took jurisdiction and prohibited the Admiralty; and thus, in the King's Bench more than in the Court of Admiralty, and especially under Lord Mansfield, the maritime law was built up and extended. In like manner, that large portion of the admiralty law which relates to the royal revenue, was, in England, administered in the Court of Exchequer, instead of the Court of Admiralty.⁷

§ 41. The Law of the Courts.

The jurisdiction of the admiral, and the administration of the admiralty law proper, the local maritime law, as it became a judicial function, has thus passed into the hands of the courts, and they now administer the admiralty law and the maritime law, both of which are sometimes called the admiralty law, sometimes the maritime law, and sometimes the admiralty and maritime law; and cases arising under them are cases of admiralty and maritime jurisdiction.⁸

§ 42. Maritime Codes.

In different maritime nations, these two, the local admiralty law and the general admiralty law, have been codified and are found united in the maritime codes and ordinances which those nations have compiled or enacted, and which will be further noticed in future pages of this work, when the actual maritime law as administered in the civilized nations of the world, will be more particularly the subject of inquiry.

§ 43. Other Maritime Systems.

In endeavoring further to ascertain what the framers of the constitution meant by the words *admiralty* and *maritime*, it is important to inquire more especially into the admiralty and maritime systems of England, of Scotland, of the British American Colonies, of the American States under the Confederation, and of France, which the framers of the constitution may have had in mind. At the time when the constitution was formed, English, Scotch, American, and French

⁷ Spen. Eq. Juris.; *The King v. Carew*, 1 Vern. 54; *Meclanham v. Foliam*, Gilb. Cases, 9; *Glascott v. Lang*, 3 Myl. & Craig, 454; S. C. 2 Jur. 909; *Duncan v. McCalmont*, 3 Beav. 409.

⁸ *Ante*, § 4; Hall Ad. Introd. 11; *Erskine's Laws of Scot.* 32; *De Lovio v. Boit*, 2 Gall. Rep. 398.

commercial enterprise controlled most of the maritime commerce of the world; and such was our relation to them all, that the great men who were laying the foundations of our government, while they did not adopt in detail the institutions of any people, cannot be presumed, in so important a matter, to have been ignorant of, or to have overlooked the maritime courts of either of those jurisdictions, and they must have been, in some sort, historically acquainted with them all.

CHAPTER V.

THE ANCIENT JURISDICTION OF THE ENGLISH ADMIRALTY.

§ 44. Its Earliest Jurisdiction.

The jurisdiction of the English Admiralty, as actually exercised in its earliest days, and for centuries afterwards, was most extended, various, and ample, embracing all maritime causes of action, civil and criminal, of contract and of tort, and all causes of action arising on sea or beyond sea in foreign countries.¹

§ 45. The Grants of Jurisdiction.

There were no statutes granting jurisdiction to the Admiralty and other superior courts in England prior to 1840.² The Chancery, King's Bench, Common Pleas, Exchequer, and Admiralty, are all, in theory, branches of the royal prerogative. It is, therefore, in the acts and records of prerogative, in the commissions and ordinances of the monarch, that we are to look for the grants of jurisdiction, and the proper evidence of its legitimate extent, except when they are limited by statute.

§ 46. The Admiral's Commission.

The commission of the Admiral of England, by the ancient and the later patents, conferred a most ample jurisdiction, in the most unequivocal terms. It was as follows: "*Damus et concedimus, etc.* We give and grant to N. the office of our great Admiral of England, Ireland, and Wales, and the dominions and islands belonging to the same, also of our town of Calais and our marches thereof, Normandie, Gascoigne, and Aquitaine; and we make, appoint and ordain him our Admiral, etc., with all privileges, jurisdictions, etc., and power in civil causes *ad cognoscendum de placitu*, to hold conusance of *pleas, debts, bills of exchange, policies of insurance, accounts, charter parties, contractions, bills of lading, and all other contracts which any ways*

¹ The *Emulous*, 1 Gal. 563; *De Lovio v. Boit*, 2 Gal. 398; The *Little Joe*, Stewart's Ad. R. 396.

² *Post*, § 81.

*concern moneys due for freight of ships hired and let to hire, moneys lent to be paid beyond the seas at the hazard of the lender, and also of any cause, business, or injury whatsoever, had or done in, or upon, or through the seas, or public rivers, or fresh waters, streams, and havens and places subject to overflowing, whatsoever, within the flowing and ebbing of the sea, upon the shores or banks whatsoever adjoining to them or either of them, from any the said first bridges whatsoever, towards the sea, throughout our kingdom of England and Ireland, or our dominions aforesaid, or elsewhere beyond the seas, or in any parts beyond the seas whatsoever," etc.*³

§ 47 The Admiral's Commission. II.

All the patents of the office of Lord High Admiral, from the beginning of Queen Mary's time (1553) to the time of Charles II., are said by Zouch to have been conceived after one and the same form and tenor; and from his declaration and that of Selden, and from the commissions to the colonial vice-admirals and judges, hereafter set forth, which are said by Judge Story to be copied from them, it is presumed that, in the matter of judicial jurisdiction, the whole series of commissions, for many centuries, has conferred the same ample powers which will be found to be fully sustained by the other solemn royal acts relating to the same subject.⁴

§ 48. The Admiral's Commission. III.

By the commission of Oyer and Terminer, also granted to the admiral, according to stat. 28, Henry VIII., cap. 15, power is granted to hear and determine "Of all and singular treasons, robberies, murders, etc., as well in and upon the sea, as any river, port, or fresh-water creek, or place whatever within the flowing of the sea to the full, beneath the first bridges towards the sea, or upon the shore of the sea, or elsewhere within the King's maritime jurisdiction of the admiralty of the realm, etc., as well against the peace and the laws of the land, as against the King's laws, statutes, and ordinances of the King's Court of Admiralty; and also touching *all and singular other matters which concern merchants and proprietors of ships, masters, shipmen, mariners, shipwrights, fishermen, workmen, laborers, sailors, scavengers, or any others.*"⁵

³ Zouch, Ass. 2; Selden, lib. 2, chap. 16; The Little Joe, Stewart's Ad. R. 394.

⁴ Waring v. Clarke, 46 U. S. (5 How.) 441.

⁵ Zouch, Ass. 2.

§ 49. The Laws of Oleron.*

The judgments or laws or rules of Oleron, made by King Richard I., on his return from the Holy Land, in the latter part of the twelfth century, according to English judicial histories,⁷ are among the earliest records of prerogative legislation on the subject of which we have any proper evidence. That monarch is said to have remained some time in the Island of Oleron, then a part of his dominions, lying off the west coast of modern France and to have pronounced the judgments, as they are called, of Oleron. They seem to be of the nature of the rescripts of the Roman Emperors, and, being collected together, have now existed as a code of maritime law, for nearly seven hundred years, as respectable for its universal authority, justice, and equity, as venerable for its high antiquity. This code is accessible to all, and will only be referred to here as embracing, in the most obvious construction of its sententious judgments, almost all the variety of maritime contracts, offences, and liabilities, occurring as well in ports, in harbors, and on the coasts, as on the open sea.

In the time of Henry VIII. they were published as "The judgment of the sea of Masters, of Mariners, and Merchants, and all their doings," which is but a literal translation of the earlier French title of the same code. Later English publications entitle them "The Naval Laws of Oleron, instituted by Richard I., King of England, on his return from the Holy Land, in the end of the eleventh [*sic*] century, for the better regulation of *merchants, owners, and of ships, and mariners, and all seafaring persons in maritime affairs.*"⁸

§ 50. Zouch's Classification.

Zouch thus classifies their provisions in a very general manner:—

"1. Touching ships hired for sea voyages, and their proceedings in the same.

"2. Touching the safe keeping and delivery of goods received into ships.

* Literally, the "Rolls" of Oleron: Pardessus Loix Mar. Vol. I, ch. 8. See *post*, § 116.

⁷ We are not ignorant that Pardessus has clearly shown, that the laws of Oleron were not the production of Richard I.; but as affecting the question under consideration, the English view of their origin is alone important; and the ablest English writers, including the learned Selden, have claimed them as the production of that monarch.

⁸ Sea Laws, 120; Cleirac, 7; Pet. Ad. R. Appendix; Zouch, Ass. 3; 1 Pardessus, 320; Prynne, 107; Miegé's Sea Laws, 3; Godolph. 163.

"3. Touching the engaging (selling or hypothecating) of ships or goods, in case of necessity.

"4. Touching contributions to be made for loss, upon occasion of common danger.

"5. Touching damages done by or betwixt several ships.

"6. Touching the charge for hiring pilots, and their duty."

Under each of these classes he gives several specifications, and there are many matters of which he makes no mention, including mariners' wages.⁹

§ 51. The Black Book of the Admiralty.

The Black Book of the Admiralty is an ancient book or register of admiralty laws, decisions, ordinances, and proceedings and acts of the King, the Admiral, and the Court of Admiralty, of England, from the earliest periods. It is not known with certainty when, or by whom, it was collected or compiled. It is of an ancient hand apparently, not written all at once, nor by one person, but the first part in the reign of Edward III., or Richard II., and the latter part in the reigns of Henry IV., Henry V., and Henry VI., long before the angry controversies between the common law courts and the Court of Admiralty. It has been always considered by all writers on maritime law, as a book of very great authority, containing the ancient rules or statutes of the English Admiralty. Mr. Selden styles it, "*Vetusti Tribunalis Maritimi Commentarii*," and "*Codex Manuscriptus de Admiraltatu*;" and says, there are in it constitutions touching the Admiralty of Henry I., Richard I., King John, and Edward I.¹⁰

§ 52. Black Book of the Admiralty. II.

The records of the Black Book of the Admiralty make frequent reference to the laws of Oleron in maritime matters, and show clearly that they were the rule of decision in these early days. At that time, however, judicial as well as executive jurisdiction was a source of power and profit from the numerous forfeitures and other perquisites, and all courts were ingenious and grasping in their efforts to extend their power. The lords, in their liberties and franchises, by their bailiffs and other officers, encroached upon the proper jurisdiction of the admiral, and the subject was brought before the king and his council in the second year of Edward I., and the following ordinances were the result of that resort to royal prerogative. They are taken

⁹ Zouch, Ass. 3.

¹⁰ Zouch, Ass. 3; Prynn, 115; 2 Brown Civ. & Ad. Law, 42; Zouch, Ass. 1; Seld. Dom. Mar. b. 2, c. 28; De Lovio v. Boit, 2 Gall. 398.

from the Black Book of the Admiralty, published by authority of the Lords Commissioners of Her Majesty's Treasury, under the direction of the Master of the Rolls.¹¹

§ 53. Black Book of the Admiralty. III.

"Item, it was ordained at Hastings by King Edward the first and his lords, that though divers lords had severall franchises to try pleas in ports, that neither their seneschalls (or stewards) nor bayliffs should hold plea, it concerns merchant or marriner as well for fact as charter of ships or (charter partyes) obligations, and other facts, though the same amounts but to twenty shillings or forty shillings." (No. 20.)

"Item, any contract made between merchant and merchant, or merchant or marriner beyond the sea, or within the flood mark, shall be tryed before the Admirall and no where else by the ordinance of the said King Edward and his lords." (No. 21.)

§ 54. Black Book of the Admiralty. IV.

The ordinances of Edward I. were the foundation of a consistent usage for a long period of time. The entries in the Black Book of the Admiralty show clearly that the same usage prevailed in the time of Edward III. Prynne quotes cases of prizes, mariners' wages, demurrage, freights from and to several ports, and marine torts, in which constant reference is made to the laws of Oleron, and the ordinances of Edward I., as the ancient law of the admiralty. He also quotes from the same book to the same effect, the inquisitions following:—¹²

"*Item.*—Let inquisition be made of all those who implead *any merchants, mariners, or other men, at the common law, of anything pertaining to the ancient marine law, and if any one is indicted and convicted, he shall pay a fine to the King for his improper suit and vexation, and shall besides withdraw his suit from the common law, and bring it before the Admiral's Court, if he will further prosecute it.*"

"*Item.*—Let inquisition be made of those seneschals and bailiffs of lords having domains on the coasts of the sea, who hold a claim to hold any plea concerning *merchants or mariners, exceeding 40 shillings sterling. . . . And this is the ordinance of Edward I. at Hastings in the second year of his reign.*"

¹¹ London, Longman & Co. and Trubner & Co., Paternoster Row, 1871.

¹² Prynne, *Animad.* 116, 119.

“Et nota.—That all contracts began and made inter merchant and merchant, beyond sea, or within the flow and reflow, commonly called flood mark, shall be tried and determined before the Admiral, and not elsewhere, by the aforesaid ordinance.”

§ 55. The Inquisition at Quinborough or Queenborough.

In the forty-ninth year of Edward III. (A. D. 1376), the inquisition at Quinborough was taken by eighteen expert seamen, “men of knowledge and experience in maritime causes,” before William Neville, Admiral of the North, Philip Courtney, Admiral of the West, and Lord Latimer, Lord of the Cinque Ports. The verdicts there given were desired to be established by the king’s letters patent in the Cinque Ports and towns adjoining to the Thames, to be observed by the owners, masters, and mariners of ships under penalties. They were enrolled amongst the records of the tower, for the government of the admiralty. They cover a very wide range of maritime causes of complaint and of actions. The heads of them are given by Zouch, and are as follows:¹²

§ 56. Inquisition at Quinborough. II.

“Heads of the Articles of the Inquisition, taken at Quinborough in the year 1376, in the 49th of King Edward the Third, by eighteen expert seamen, before William Nevil, Admiral of the North, Philip Courtney, Admiral of the West, and the Lord Latimer, Warden of the Cinque Ports.

“I. OFFENCES AGAINST THE KING AND KINGDOM.

“1. Of such as did furnish the enemy with victuals and ammunition, and of such as did traffic with the enemies without special licence.

“2. Of Traytors goods detained in ships and concealed from the King.

“3. Of Pirates, their receivers, maintainers and consorters.

“4. Of murders, manslaughters, maimes and petty felonies, committed in ships.

“5. Of ships arrested for king’s service; breaking the arrest; and of sergeants of the admiralty, who for money discharge ships arrested for the king’s service; and of mariners who having taken pay run away from the king’s service.

“II. OFFENCES AGAINST THE PUBLIC GOOD OF THE KINGDOM.

“1. Of ships transporting gold and silver.

“2. Of carrying corn over sea without special licence.

¹² Zouch, Ass. 1, 90; Malynes, cap. 17, 18; Zouch, Ass. 3, 96.

" 3. Of such as turn away merchandises or victuals from the king's ports.

" 4. Of forestallers, regrators, and of such as use false measures, balances, weights, within the jurisdiction of the admiralty.

" 5. Of such as make spoil of wrecks, so that the owners, coming within a year and a day, cannot have their goods.

" 6. Of such as claim wrecks, having neither charter nor prescription.

" 7. Of wears, riddles, blindstakes, water mills, etc., whereby ships and men have been lost or endangered.

" 8. Of removing anchors, and cutting of buoy-ropes.

" 9. Of such as take salmons at unreasonable times.

" 10. Of such as spoil the breed of oysters, or drag for oysters and muscles at unreasonable times.

" 11. Of such as fish with unlawful nets.

" 12. Of taking royal fishes, viz., whales, sturgeons, porpoises, etc., and detaining one half from the king.

III. OFFENCES AGAINST THE ADMIRAL, THE NAVY, AND DISCIPLINE OF THE SEA.

" 1. Of judges entertaining pleas of causes belonging to the admiral, and of such as in admiralty causes sue in the courts of common law, and of such as hinder the execution of the admiral's process.

" 2. Of masters and mariners contemptuous to the admiral.

" 3. Of the admiral's shares of waifs or derelicts, and of deodands belonging to the admiral.

" 4. Of *Flotson*, *Jetson* and *Lagon*, belonging to the admiral.

" 5. Of such as freight strangers' bottoms, where ships of the land may be had at reasonable rates.

" 6. Of ship-wrights taking excessive wages.

" 7. Of masters and mariners taking excessive wages.

" 8. Of pilots, by whose ignorance ships have miscarried.

" 9. Of mariners forsaking their ships.

" 10. Of mariners rebellious and disobedient to their masters."

§ 57. Extent of Authority in 1664.

Chief Justice Anderson also, in 1664, declares that, according to these ordinances of Edward I., which he sets forth, the admirals have used their authorities, to his time, for things done beyond the sea, and on the sea, and between high and low water mark, which proves that the space between high and low water mark is to be taken as a part of the sea, when the tide is in.¹⁴

§ 58. Statute of Richard II.

These ordinances of Edward I. and Edward III., appear to have so strengthened the Admiralty, that, in its turn, it encroached upon

¹⁴ Sir John Constable's Case, Anderson Rep. 89.

other jurisdictions, and usurped that which did not belong to it; and complaints were made to the King, not of the admirals exercising their ancient jurisdiction in all maritime matters, but that within the bodies of the counties of the nation they took jurisdiction of trespasses, house-breaking, carrying away goods on land, of the king's deodands and wrecks; of regulating the prices of provisions, the wages of labor, and other things of this sort, interfering with the every-day business of the common people on land. This produced in the year 1389 the statute 13 Richard II., cap. 5, re-enacting the proper maritime law, and the usage of the time of Edward III.,¹⁵ as follows:

"Item.—Forasmuch as a great and common clamor and complaint hath been oftentimes made before this time, and yet is, for that the Admirals and their deputies hold their sessions within divers places of this realm, as well within franchise as without, accroaching to them greater authority than belongeth to their office, in prejudice of our Lord the King, and the common law of the realm, and in diminishing of divers franchises, and in destruction and impoverishing of the common people, it is accorded and assented, that the Admirals and their deputies shall not meddle from henceforth of anything done within the realm, *but only* of a thing done upon the sea, as it hath been used in the time of the noble prince, King Edward, grandfather of our Lord the King, that now is."¹⁶

"But only," is another phrase for *unless* or *except*, and if either of those words had been used (the realm of England including all the British seas), there would hardly have been any dispute about the meaning of this act. The admiral "shall not meddle of anything done within the realm, except of a thing done upon the sea, as it hath been used in the time of King Edward I.," was evidently intended only to enforce the ancient maritime jurisdiction, and to cut off the new usurpations of the admirals on the land, and not on the water, to the prejudice of the king's perquisites, in diminishing the franchises of the lords, and impoverishing the common people, who were thus subject to double exactions.¹⁷

§ 59. The Admiral's Jurisdiction.

Between high and low water was, on all hands, held to be the sea when the tide was in, and the Admiral, it seems, took occasion, from his admitted right over the sea and between high and low water mark,

¹⁵ Prynne, 83.

¹⁶ 4 Evans' Stat. 271.

¹⁷ Prynne, 86.

to extend it to the land when the tide was out, and to claim the valuable perquisites of wrecks, always a *droit* of the king and not of the admiralty, which were often on the land and the water, alternately as the tide ebbed and flowed, and to the dams and wears in the small rivers and streams, and to the ponds; and in the franchises, liberties, cities, and boroughs within the bodies of the counties, as well on land as on water, the Admirals usurped the perquisites and privileges of the king and the lords.¹⁸

§ 60. Statute of 1391. 15 Richard II., Cap. 3.

Another statute was accordingly passed two years after the last, evidently intended to remedy this abuse, and to protect the common law jurisdiction in the bodies of the counties, that is, on the land, when the tide was out, and above high water mark, and in the tideless rivers, streams and ponds; as Chief Justice Anderson says, "the rivers which were in the counties," and to protect the king and the lords in their perquisites. It was in these words:—

"*Item.*—At the great and grievous complaint of all the commons, made to our lord the King in this present parliament, for that the Admirals and their deputies do incroach to them divers jurisdictions, franchises, and many other profits, pertaining to our lord the King, and to other lords, cities and boroughs, other than they were wont, or ought to have of right, to the great oppression and impoverishment of all the commons of the land, and hindrance and loss of the King's profits, and of many other lords, cities and boroughs, through the realm: It is declared, ordained and established, that of all manner of contracts, pleas and quarrels, and all other things rising within the bodies of the counties, as well by land as by water, and also of wreck of the sea, the Admiral's Court shall have no manner of cognizance, power nor jurisdiction, but all such manner of contracts, pleas and quarrels, and all other things rising within the bodies of counties, as well by land as by water as afore, and also wreck of the sea, shall be tried, determined, discussed and remedied by the laws of the land, and not before nor by the Admiral, nor his lieutenant in any wise; nevertheless of the death of a man, and of a mayhem, done in great ships, being and hovering in the main stream of great rivers, only beneath the bridges of the same river, nigh to the sea, and in none other places of the same rivers, the Admiral shall have cognizance, and also to arrest ships in the great flotes for the great voyages of the

¹⁸ Sir John Constable's Case, Anderson Rep. 89; Sir Henry Constable's Case, Coke Rep. part 5, 106; Prynne, 116.

King and the realm, saving always to the King all manner of forfeitures and profits thereof coming, and he shall have also jurisdiction upon the said flotes, during the said voyages, only saving always to the lords, cities and boroughs, their liberties and franchises." ¹⁹

§ 61. Statute of 1391—II.

This statute is not perfectly clear, and the obscurity arises apparently, from the use of the phrase, "within the *bodies of the counties*, as well by land as by water," which by the common law judges, in later times, has been considered as equivalent to "within the territorial limits of the counties." This can hardly be the proper force of the language, since all the counties of England, bounded upon the seas or the navigable rivers, include a large portion of the water within their territorial limits even beyond low water mark, and it has never been doubted that the counties extend at least to low water mark, no matter what may be the state of the tide; yet it seems to be equally well settled, that, at high water, the space between high water mark and low water mark, is not within the *body* of the county. That phrase, apparently, must be considered as applying only to the land and to such water (probably not navigable waters) as could not be considered as a part of the sea, or did not connect with it. Such seems to have been the opinion of Chief Justice Anderson, and of Coke himself. The admiral's jurisdiction extended only to what was done in the water, including the water between high water mark and low water mark, in the ordinary and natural course of the sea. "Where the sea ebbs and flows, every thing done on the land when the sea is ebbcd, shall be tried at the common law, for it is *then* parcel of the county, *infra corpus comitatus*." Below the low water mark, the admiral has the sole and absolute jurisdiction. Between the high water mark and the low water mark, the common law and the admiral have *divisum imperium*, interchangeably, as aforesaid, which seems to be proved by the statute 13 Rich. II., cap. 5, confirming the usage in Edward I's time; and 15 Rich. II., cap. 3, not mentioning this well-known usage, does not take it away, but only new usurpations of things done in rivers which were in the counties. This is declared by the learned Prynne to be a most clear resolution of the thing in question, both in point of right, law, and usage, from 2 Edw. I., to his (Ch. Justice Anderson's) time, with his genuine interpretation of the statutes of 13 and 15 Rich. II. Indeed, by a familiar rule of con-

¹⁹ 4 Evans' Stat. 271; Jackson v. The Magnolia, 61 U. S. (20 How.) 296.

struction, the statute 13 Rich. II., recognizing and establishing as law the usage of the time of Edw. I., could not be held to be repealed by the statute 15 Rich II., unless the act or the usage were expressly repealed or abrogated.²⁰

§ 62. The Statute of 1400.

This statute, however, though plainly not intended to limit the ancient jurisdiction of the Admiralty, but simply to secure to the king and the lords their perquisites, was, nevertheless, the means of making the admiralty subject to the same encroachments and usurpations which the statute was intended to prevent, and in the year 1400, the statute 2 Hen. IV. cap. 2, was passed. It was in these words:—

“*Item.*—Whereas in the statute made at Westminster, in the 13th year of the Second King Richard, amongst other things it is contained that the Admirals and their deputies shall not intermeddle from thenceforth, of any thing done within the realm, but only of a thing done upon the sea, according as it hath been duly used in the time of the noble King Edward, grandfather to the said King Richard, our Lord the King willeth and granteth that the said statute be firmly holden and kept and put in execution.”

This statute was obviously passed for the sole purpose of precluding the narrow construction which has sometimes been given to 13 Rich. II. in connection with 15 Rich. II.

²⁰ Zouch, Ass. 5; Sir Henry Constable's Case, Coke's Rep. part 5, 106; Sir John Constable's Case, Anderson Rep. 89; Prynne, 111.

CHAPTER VI.

THE STRIFE BETWEEN THE COMMON LAW COURTS AND THE ADMIRALTY, IN THE 16TH AND 17TH CENTURIES.

§ 63. Jealousy of the Admiralty.

Hitherto the strife between the two jurisdictions was a less hostile rivalry than at a later period, when the Admiralty Court was made the subject of much irrational jealousy and strong controversy. In the sixteenth and seventeenth centuries, the Admiralty suffered much from the violence of this jealousy. "Jealousy," says Edwards, "is perhaps a mild word to apply to the passion with which the superior courts took up this question, for there appears to have been more greediness than emulation at the bottom of it. It was, says the learned Prynne, 'for more jurisdiction, for gain, not for the public good, but that one jurisdiction might swallow up the other.' It is to be regretted that to no less illustrious a personage than Lord Coke is to be ascribed the origin of this jealousy; and that being the case, it is not wonderful that others should, from subserviency to the opinion of so great a man, have followed in the same track, or even have gone beyond it, *imitatores servum pecus!* Matters raged so high, that a war was declared between the two courts. Prohibitions were hurled from Westminster and without much order, serving, therefore, more to irritate than to subdue the Admiralty Court, which, though powerless and without the means of attack, obstinately held out for its ancient and time-honored privileges."¹

§ 64. Agreement between Admiralty and Common Law Judges.

In 1575, in the reign of Elizabeth, before the controversy had assumed that angry character which it afterwards exhibited, the judges of the admiralty and the common law judges entered into an agreement on the subject of prohibitions. To this agreement, the Queen does not appear to have been a party, but it indirectly had the effect to keep the peace between the two jurisdictions; for thereafter during the reign of Elizabeth, no prohibition appears to have been

¹ Edwards' Ad. Juris. 17; Smart v. Wolff, 3 T. R. 348.

issued against the admiralty, except two or three, which are mentioned by Coke in 4th Institutes. The agreement of 1575 is worthy of notice, as an evidence that the common law courts claimed a sort of legislative or prerogative power in matters of jurisdiction. They do not appear so much to be deciding principles and declaring the law, as granting requests, consenting to agreements, and making promises. It was indeed so: the law was on the side of the admiralty; the power was in the hands of the common law judges.²

The agreement of 1575 was as follows:—

“The Request of the Judge of the Admiralty to the Lord Chief Justice of her Majesty’s Bench and his Colleagues, and The Judges’ Agreement, the 7th of May, 1575.

Request.

§ 65.

“That after judgment or sentence definitive given in the Court of the Admiralty, in any cause, and appeal made from the same to the High Court of Chancery; that it may please them to forbear granting of any writ of prohibition, either to the judge of the said court, or to Her Majesty’s delegates, at the suit of him, by whom such appeal shall be made, seeing by choice of remedy that way, in reason he ought to be contented therewith, and not to be relieved any other way.

Agreement.

“It is agreed by the Lord Chief Justice and his colleagues, that after sentence given by the delegates, no prohibition shall be granted; and yet if there be no sentence, if a prohibition be not sued within the next term following sentence in the Admiral Court, or within two terms next after, at the farthest, no prohibition shall pass to the delegates.

Request.

§ 66.

“Also, that prohibitions be not granted hereafter upon bare suggestions or surmises, without summary examination and proof made thereof, wherein it may be lawful to the Judge of the Admiralty and the party defendant, by the favor of the court, to have counsel, and to plead for the stay thereof, if there shall appear cause.

Agreement.

“They have agreed, that the judge of the Admiralty, and the party defendant shall have counsel in court, and plead the stay, if there may appear evident cause.

Request.

§ 67.

“That the Judge of the admiralty, according to such ancient order

²Prynne, 98; Edw. Ad. Juris, 21.

as hath been taken, 2 Ed. I., by the king and his council, and *according to the letters patents of the Lord Admiral* for the time being, and allowed of by other kings of this land ever since, and by custom, time out of memory of man, may have and enjoy the cognition of all contracts, and other things arising, as well beyond, as upon the sea, without any let, or prohibition.

Agreement.

“This is agreed upon by the said Lord Chief Justice and his colleagues.

Request.

§ 68.

“That the said Judge may have and enjoy the knowledge and breach of charter parties made between masters of ships and merchants, for voyages to be made to the parts beyond the seas, and to be performed upon, and beyond the sea, according as it hath been accustomed, time out of mind, and according to the good meaning of the statute of 32 H. VIII. c. 14, though the same charter parties happen to be made within the Realm.

Agreement.

“This is likewise agreed upon, for things to be performed either upon, or beyond the seas, though the charter party be made upon the land, by the statute of 32 H. VIII. c. 14.

Request.

§ 69.

“That writs of *corpus cum causa* be not directed to the said Judge in causes of the nature aforesaid; and if any happen to be directed, that it may please them to accept the return thereof, with the cause, and not the body, as it hath always been accustomed.

Agreement.

“If any writ of this nature be directed in the causes before specified, they are content to return the bodies again to the Lord Admiral’s gaol, upon certificate made of the cause to be such, or if it be for contempt, or disobedience done to the court in any such cause.”

§ 70. Grievances of 1611.

The admiralty jurisdiction, at that time, appears to have extended to all cases of freight, charter parties, bottomry, mariners’ wages, debts due to material men for the building and repairing of ships, and, generally, to all maritime contracts. When, however, the Queen was dead, as well as most of those who were parties to the agreement, and reference was made to it, Coke denied its authority, because, as he said, the paper from which it was read to him was not subscribed with the hand of any judge; and, on his own responsibility, he declared that the judges of the King’s Bench had never assented to it; and prohibitions were granted by him, more than ever before. The learned doc-

tors of the admiralty, however, still endeavored to convince the higher powers that their jurisdiction had no temptation to encroachment; and that, without wishing to enlarge the limits of their courts, they were only actuated by a love of justice and respect for their native dignities; but their outcries were little listened to by their rapacious invaders. The practisers in the admiralty were not the only sufferers from this useless conflict. The merchants—*i. e.*, the people—called loudly for a cessation of hostilities, and the crown was appealed to in 1611, when the agreement of 1575 was read before the king, James I., as an agreement to which the judges of the common law and the admiralty were parties.³ At that time a specification of grievances was submitted to the king by the Lord High Admiral, and the Judge of the Admiralty. His Majesty ordered Dr. Dunn, the Judge of the Admiralty, to arrange the matters of complaint in specific articles, and, it seems, to submit them to the common law judges, to be answered by them; and they are said, by Coke, to have made the answers which he gives, and which breathe his imperious spirit. The irresolute James does not appear to have made any order in the premises, but to have allowed the agreement of 1575, and the court of admiralty, to defend themselves as they best could; and Coke triumphed.⁴

This list of grievances is known as *Articuli Admiralitatis*. They are as follows, with the caption of Coke:—⁵

“ Articuli Admiralitatis.

“The complaint of the Lord Admiral of *England* to the King’s most Excellent Majesty, against the Judges of the Realm, concerning Prohibitions granted to the Court of the Admiralty, 11 *Febr. penultimo die Termini Hillarii, Anno 8 Jac. Regis*: The effect of which complaint was after by his Majesties commandment set down in Articles by Doctor *Dun*, Judge of the Admiralty; which are as followeth, with answers to the same by the Judges of the Realm: which they afterwards confirmed by three kinds of authorities in Law. 1. By Acts of Parliament. 2. By judgments and judicial proceedings; and lastly, by Book cases.⁶

“Certain Grievances, whereof the Lord Admiral and his officers of the Admiralty do especially complain, and desire redress.

³ Edw. Ad. Juris. 20.

⁴ Introduction to Hall’s Admiralty, x.; Prynne, 99; Edwards’ Ad. 20.

⁵ Zouch, Intro.; 4 Inst. 134.

“*1st Objection.*—That whereas the conusance of all contracts and other things done upon the sea, belongeth to the Admiral jurisdiction, the same are made triable at the common law, by supposing the same to have been done in Cheapside, or such places.

“*The Answer.*—By the laws of this realm the Court of the Admiral hath no conusance, power or jurisdiction of any manner of contract, plea or querele within any county of the realm, either upon the land or the water: but every such contract, plea or querele, and all other things rising within any county of the realm, either upon the land or the water, and also wreck of the sea ought to be tried, determined, discussed and remedied by the laws of the land, and not before or by the Admiral nor his Lieutenant in any manner. So as it is not material whether the place be upon the water *infra fluxum et refluxum aquæ*: but whether it be upon any water within any county. Wherefore we acknowledge that of contracts, pleas and querels made upon the sea, or any part thereof which is not within any county (from whence no trial can be had by twelve men) the Admiral hath, and ought to have jurisdiction. And no precedent can be showed that any prohibition hath been granted for any contract, plea or querele concerning any marine cause made or done upon the sea, taking that only to be the sea wherein the Admiral hath jurisdiction, which is before by law described to be out of any county. See more of this matter in the answer to the sixth article.

“*2d Objection.*—When actions are brought in the Admiralty upon bargains and contracts, made beyond the seas, wherein the common law cannot administer justice, yet in these cases prohibitions are awarded against the Admiral Court.

“*The Answer.*—Bargains or contracts made beyond the seas, wherein the common law cannot administer justice (which is the effect of this article), do belong to the constable and marshal: for the jurisdiction of the Admiral is wholly confined to the sea, which is out of any county. But if any indenture, bond or other specialty, or any contract be made beyond the sea, for doing of any act or payment of any money within this realm, or otherwise, wherein the common law can administer justice, and give ordinary remedy; in these cases neither the constable and marshal, nor the Court of the Admiralty hath any jurisdiction. And, therefore, when this Court of the Admiralty hath dealt therewith in derogation of the common law, we find that prohibitions have been granted, as by the law they ought.

“ *3d Objection.*—Whereas, time out of mind, the Admiral Court hath used to take stipulations for appearance and performance of the acts and judgments of the same court: it is now affirmed by the judges of the common law that the Admiral Court is no Court of Record, and therefore not able to take such stipulations: and hereupon prohibitions are granted to the utter overthrow of that jurisdiction.

“ *The Answer.*—The Court of the Admiralty proceeding by the civil law is no Court of Record, and therefore cannot take any such recognizance as a Court of Record may do. And for taking of recognizances against the laws of the realm, we find that prohibitions have been granted, as by law they ought. And if an erroneous sentence be given in that court, no writ of error, but an appeal before certain delegates doth lie, as it appeareth by the statute of 8 Eliz. Regina, cap. 5, which proveth that it is no Court of Record.

“ *4th Objection.*—That charter parties, made only to be performed upon the seas, are daily withdrawn from that court by prohibitions.

“ *The Answer.*—If the charter party be made within any city, port, town or county of this realm, although it be to be performed either upon the seas, or beyond the seas, yet is the same to be tried and determined by the ordinary course of the common law, and not in the Court of the Admiralty. And therefore when that court hath incroached upon the common law in that case, the Judge of the Admiralty and the party suing there have been prohibited, and oftentimes the party condemned in great and grievous damages by the laws of the realm.

“ *5th Objection.*—That the clause of *Non obstante statuto*, which hath foundation in his Majesty's Prerogative, and is current in all other grants, yet in the Lord Admiral's Patent is said to be of no force to warrant the determination of the causes committed to him in his Lordship's Patent, and so rejected by the judges of the common law.

“ *The Answer.*—Without all question the statutes of 13 R. 2, cap. 3, 15 R. 2, cap. 5, and 2 H. 4, cap. 11, being statutes declaring the jurisdiction of the Court of the Admiral, and wherein all the subjects of the realm have interest, cannot be dispensed with by any *non obstante*, and therefore not worthy of any answer; but by colour thereof, the Court of the Admiralty hath, contrary to those Acts of Parliament, incroached upon the jurisdiction of the common law, to the intolerable grievance of the subjects, which hath oftentimes

Montague, eminent lawyers, and signed by all the twelve judges of the common law courts, and by the "grand lawyer, Mr. William Noye, Attorney-General, a great professor and pillar of the common law," and by the Judge of the Admiralty, entered in the Council Table Register of Causes, and the original by his Majesty's command kept in the Council chest.⁷

"At Whitehall, 18th of February, 1632. Present: The King's Most Excellent Majesty.

Lord Keeper,
 Lord Archb. of York,
 Lord Treasurer,
 Lord Privy Seal,
 Earl Marshall,
 Lord Chamberlain,
 Earl of Dorset,
 Earle of Carlisle,
 Earl of Holland,
 Earl of Darby,
 Lord Chancellor of Scotland,
 Earl Morton.

Lord V. Wimbleton,
 Lord Vis. Wentworth,
 Lord V. Faulkland,
 Lord Bishop of London,
 Lord Cottington,
 Lord Newburgh,
 Mr. Treasurer,
 Mr. Comptroller,
 Mr. Vice Chamberlain,
 Mr. Secretary Coke,
 Mr. Secretary Windebank.

"This day his Majesty being present in Council, the articles and propositions following for the accommodating and settling of the differences concerning prohibitions, arising between his Majesty's Courts of Westminster, and his Court of Admiralty, were fully debated, and resolved by the Board. And were then likewise upon reading the same as well before the Judges of his Highnesse said Courts at Westminster as before the Judge of his said Court of Admiralty, and his Attorney-General, agreed unto and subsigned by them all in his Majesty's presence, and the transcript thereof ordered to be entered into the register of Council Causes and the original to remain in the Council chest.

"1. If suit shall be commenced in the Court of Admiralty upon contracts made, or other things personally done beyond the seas, or upon the sea, no prohibition is to be awarded.

⁷ Prynne, Ad. 100; Introduction to Hall's Admiralty, xxiv.

fereth from these answers, it is against the laws and statutes of this realm; and therefore the Judges of the King's Bench never assented thereunto, as is pretended, neither doth the phrase thereof agree with the terms of the laws of the realm.

"8th Objection.—Many other grievances there are, which, in discussing of these former, will easily appear worthy also of reformation.

"The Answer.—This article is so general, as no particular answer can be made thereunto, only that it appeareth by that which hath been said, that the Lord Admiral, his Officers and Ministers principally by colour of the said void *non obstante* and for want of learned advice, have unjustly incroached upon the common laws of this realm, whereof the marvail is the less, for that the Lord Admiral, his Lieutenants, Officers and Ministers have without all colour incroached and intruded upon a right and prerogative due to the crown, in that they have seized and converted to their own uses, goods and chattels of infinite value, taken by pirates at sea, and other goods and chattels which in no sort appertain unto his lordship by his letters patent, wherein the said *non obstante* is contained, and for the which he and his Officers remain accountable unto his Majesty. And they, now wanting, in this blessed time of peace, causes appertaining to their natural jurisdiction, incroach upon the jurisdiction of the common law, lest they should sit idle and reap no profit. And if a greater number of prohibitions (as they affirm), have been granted, since the great benefit of this happy peace, than before in time of hostility, it moveth from their own incroachments upon the jurisdiction of the common law. So as they do not only unjustly incroach, but complain also of the Judges of the Realm for doing of justice in these cases."

§ 71. The Agreement of 1632.

The common law judges seem to have met with no further check during the residue of the reign of James I., and the first seven years of the reign of Charles I. In that year, the Lord High Admiral and Sir Henry Martyn, the Judge of the Admiralty, brought the matter again before the king and lords of his council, before whom the matters between the Admiralty and the Judges were several times heard and debated at large; and at last these ensuing articles were drawn up, read, agreed, and resolved at the council board, by the king himself, and all the lords of his council, twenty-three in number, including Lord Keeper Coventry and Lord Privy Seal

to have had them carefully examined and certified, and sets them out at length, in form, and with the signatures. They may be found in one form or another, published in many other places, but no two copies seem to agree in all the important particulars, especially in the second and fourth paragraphs;⁸ and it is not a little remarkable that, having been preserved by Sir George Croke (who himself signed them), and published in two editions of his reports, without criticism or comment, as evidence of the law, and referred to in the index, under the word *Admiralty*, in the third edition of those reports, after the death of Sir George Croke, and of most, if not all, the judges and councillors who signed them, they should have been, without reason or apology, omitted, and their place left blank on the page, while the original reference to them was allowed to stand in the index, and so remains in all subsequent editions of Croke to this day. This very extraordinary mutilation of a book, then of high authority in the courts, tends to show that the common law jurists, who did not themselves actually perpetrate, were still willing to connive at the falsification of documents and books, to accomplish a triumph originally attempted from unworthy motives, and pursued with persevering zeal, apparently from pride of opinion, or motives as discreditable as those in which the controversy had originated.⁹

§ 73. Ordinance of 1648.

These articles were not liable to the objection that they were not signed, and for a number of years they kept the peace between the courts.¹⁰ The troubles, however, between the king and the parliament and his people soon commenced, and resulted in the overthrow of the royal authority and the establishment of the Protectorate. Little more is now known of the contest, except that it was probably renewed as soon as the check of royal authority was withdrawn. The

⁸ Dunlap's Ad. Prac. 13; Zouch, Ass. 7; Godolph. 158.

⁹ Croke's Reports Part 3, p. 296; various editions; Prynne, 100.

¹⁰ In the Harleian Miscellany, vol. 8, pp. 371 to 382, will be found a pamphlet printed in 1690, entitled "Reasons for settling Admiralty Jurisdiction, etc., etc.," attached to which are the articles of February 18, 1632, and an order of February 22, 1632, to the courts of common law to discontinue all prohibitions which come within the scope of the articles, and a petition of merchants for their re-establishment. In this petition it is stated as the result of that order that "the foreign contracts made beyond the sea, and the matter of charter parties for voyages, all ship-building, repairing, victualling of ships, mariners' wages, and other matters of mere Admiralty, did from thenceforth proceed in their due course in the said Court of Admiralty."

republican parliament was then called upon by the friends of trade and commerce, to take sides with the admiralty, and to secure to the people the benefits of its more enlarged jurisdiction; and the ordinance of 1648 was the consequence.¹¹ It was as follows:

Extract from Scobell's Collection of the Acts and Ordinances of the Republican Government of England. Anno 1648, page 147.

“CHAPTER 112.

“*The Jurisdiction of the Court of Admiralty settled.*

“The Lords and Commons assembled in Parliament, finding many inconveniences daily to arise, in relation both to the trade of this Kingdom, and the Commerce with foreign parts, through the uncertainty of jurisdiction in the trial of maritime causes, do ordain and be it ordained by the authority of Parliament. That the Court of Admiralty shall have cognizance and jurisdiction against the ship or vessel, with the tackle, apparel and furniture thereof; in all causes which concern the repairing, victualing and furnishing provisions for the setting of such ships or vessels to sea; and in all cases of bottomry, and likewise in contracts made beyond the seas, concerning shipping, or navigation, or damages happening thereon, or arising at sea in any voyage; and likewise in all cases of charter parties, or contracts for freight, bills of lading, mariners' wages, or damages in goods laden on board ships, or other damages done by one ship or vessel to another, or by anchors, or want of laying of buoys, except always that the said Court of Admiralty shall not hold pleas, or admit actions upon any bills of exchange, or accounts betwixt merchant and merchant, or their factors.

“And be it ordained, That, in all and every the matters aforesaid, the said Admiralty Court shall and may proceed and take recognizances in due form, and hear, examine, and finally end, decree, sentence and determine the same according to the laws and customs of the sea, and put the same decrees and sentences in execution, without any let, trouble or impeachment whatsoever, any law, statute or usage to the contrary heretofore made in any wise notwithstanding; saving always and reserving to all and every person and persons, that shall find or think themselves aggrieved by any sentence definitive, or decree having the force of a definitive sentence, or importing

¹¹ Introduction to Hall's Admiralty, xxvi.

a damage not to be repaired by the definitive sentence given or interposed in the Court of Admiralty, in all or any of the cases aforesaid, their right of appeal in such form as hath heretofore been used from such decrees or sentences in the said Court of Admiralty.

“ Provided always, and be it further ordained by the authority aforesaid, that from henceforth there shall be three judges always appointed of the said court, to be nominated from time to time by both houses of Parliament, or such as they shall appoint; and that every of the judges of the said court for the time being, that shall be present at the giving of any definite sentence in the said Court, shall at the same time, or before such sentence given openly in Court, deliver his reasons in law of such his sentence, or of his opinion concerning the same; and shall also openly in Court give answers and solutions (as far as he may), to such laws, customs or other matter as shall have been brought or alleged in Court, on that part against whom such sentence or opinions shall be given or declared respectively.

“ Provided also, That this Ordinance shall continue for three years, and no longer.

“ Passed, the 12th April, 1648.

“ Made perpetual by Ordinances of 1641, C. 3 and 1654, C. 21 and 1645, C. 10.

“ Expired at the Restoration, anno 1660.¹²

§ 74. Godolphin on the Jurisdiction.

Under this ordinance, the admiralty was administered till the Restoration by Dr. Godolphin, who had been one of the judges of the admiralty under Cromwell, and had written his *View of the Admiral Jurisdiction*. So great was his reputation for integrity and knowledge, that at the Restoration he was made King's Advocate, and he immediately published his work, in which the actual jurisdiction of the court is set forth as follows:—¹³

“ Within the cognizance of this jurisdiction are all affairs that peculiarly concern the Lord High Admiral, or any of his officers *quatenus* such; all matters immediately relating to the navies of the kingdome, the vessels of trade, and the owners thereof, as such; all affairs relating to mariners, whether ship-officers or common mariners, their rights and privileges respectively; their office and

¹² Introduction to Hall's Admiralty, p. xxviii.

¹³ Godolph. 43-48.

duty; their wages; their offences, whether by wilfulness, casualty, ignorance, negligence, or insufficiency, with their punishments. Also all affairs of commanders at Sea, and their under-officers, with their respective duties, privileges, immunities, offences, and punishments.

“In like manner all matters that concern owners and proprietors of ships, as such; and all Masters, Pilots, Steersmen, Boatswains, and other Ship-Officers; all Ship-wrights, Fishermen, Ferry-men and the like; also all causes of seizures, and Captures made at Sea, whether *jure Belli Publici*, or *jure Belli Privati*, by way of Reprizals, or *jure nullo* by way of Piracy; Also all Charter parties, Cocquets, Bills of Lading, Sea-Commissions, Letters of safe Conduct, Factories, Invoyses, Skippers Rolls, Inventories, and other Ship-papers; Also all causes of Freight, Mariner's wages, Load-manage, Port-charges, Pilotage, Anchorage and the like.

“Also all causes of Maritime Contracts *indeed* or *as it were* Contracts, whether upon, or beyond the Seas; all causes of money lent to Sea, or upon the Sea, called *Fœnus Nauticum Pecunia trajectitia, usura maritima, Bomarymony*, the Gross Adventure, and the like; all causes of pawning, hypothecating, or pledging of the ship itself, or any part thereof, or her Lading, or other things at Sea; all causes of *Jactus*, or casting goods over board; and Contributions, either for Redemption of Ship or Lading, in case of seizure by Enemies or Pyrats, or in case of goods damnified, or disburdening of ships, or other chances, with Average; also all causes of spoil and depredations at Sea, Robberies and Pyracies; also all causes of Naval Consortships, whether in War or Peace; Ensurance, Mandates, Procurations, Payments, Acceptilations, Discharges, Loans or Oppignorations, Emptions, Venditions, Conventions, taking or letting to Freight, Exchanges, Partnership, Factoridge, Passage-money, and whatever is of Maritime nature, either by way of *Navigation* upon the Sea, or of *Negotiation* at or beyond the Sea in the way of Marine Trade and Commerce; also the Nautical Right which Maritime persons have in ships, their Apparel, Tackle, Furniture, Lading, and all things pertaining to Navigation; also all causes of Out-readers, or Out-riggers, Furnishers, Hirers, Freighters, Owners, Part-owners of ships, as such; also all causes of Priviledged ships, or Vessels in his Majesties Service or his Letters of *safe Conduct*; also all causes of shipwreck at Sea, Flotson, Jetson, Lagon, Waiffs, Deodands, Treasure-Trove,

Fishes-Royal; with the Lord Admiral's shares, and the Finders respectively.

“Also all causes touching Maritime offences or misdemeanours, such as cutting the Buoy-Rope or Cable, removal of an Anchor whereby any Vessel is moored, the breaking the Lord Admiral's Arrests, made either upon person, ship, or goods; Breaking Arrests on ships for the King's Service, being punishable with Confiscation by the Ordinance made at *Grimsby* in the time of *Rich. I.* Mariners absenting themselves from the King's Service after their being prest; Impleading upon a Maritime Contract, or in a Maritime Cause elsewhere than in the Admiralty, contrary to the Ordinance made at *Hastings* by *Ed. I.*¹⁴ and contrary to the Laws and Customes of the admiralty of *England*; Forestalling of Corn, Fish, &c. on ship-board, regrating and exaction of water-officers; the appropriating the benefit of Salt-waters to private use exclusively to others without his Majesties Licence; Kiddles, Wears, Blind stakes, Water mills, and the like, to the obstruction of Navigation in great Rivers; False weights or measures on ship-board; Concealing of goods found about the dead within the Admiral Jurisdiction, or of Flotsons, Jetsons, Lagons, Waiffs, Deodands, *Fishes Royal*, or other things wherein the Kings Majesty or his Lord Admiral have interest; Excessive wages claimed by Ship-wrights, Mariners, &c. Maintainers, Abettors, Receivers, Concealers or Comforters of Pyrats; Transporting Prohibited goods without Licence; Draggers of Oysters and Muscles at unseasonable times, *viz.* between May-day, and Holy-rood-day; Destroyers of the brood or young Fry of Fish; such as claim Wreck to the prejudice of the King or Lord Admiral; such as unduly claim privileges in a Port; Disturbers of the Admiral Officers in execution of the Court-decrees; Water-Bayliffs and Searchers, not doing their duty; Corruption in any of the Admiral-Court-Officers; Importers of unwholesome Victuals to the peoples prejudice; Freighters of strangers Vessels contrary to the Law; Transporters of prisoners, or other prohibited persons not having Letters of safe Conduct from the King, or his Lord Admiral; Casters of Ballasts into Ports or Harbours, to the prejudice thereof; Unskilful Pilots whereby ship or man perish; Unlawful Nets, or other prohibited Engines for Fish; Disobeying of Embargos, or going to Sea contrary to the Prince his command, or against the Law; Furnishing the ships of Enemies, or the Enemy

¹⁴ *Ante*, §§ 52, 53, 54.

with ships; All prejudice done to the Banks of Navigable Rivers, or to Docks, Wharffs, Keys, or anything whereby Shipping may be endangered, Navigation obstructed, or Trade by Sea impeded; Also embezzlements of ship-tackle or furniture; all subtractions of Mariners wages; all defraudings of his Majesties Customes, or other Duties at Sea; also all prejudices done to, or by passengers a shipboard; and all damages done by one ship or Vessel to another; also to go to Sea in tempestuous weather, to sail in devious places, or among Enemies, Pyrats, Rocks, or other dangerous places, being not necessitated thereto; all clandestine attempts by making privy Cork-holes in the Vessels, or otherwise, with intent to destroy or endanger the ship; also the shewing of false Lights by Night either on shore, or in Fishing Vessels, or the like, on purpose to intice Sailors, to the hazard of their Vessels; all wilful or purposed entertaining of unskilful Masters, Pilots or Mariners, or sailing without a Pilot, or in Leaky and insufficient Vessels; also the overburdening the ship above her birthmark, and all ill stowage of goods a shipboard; also all Importation of *Contrabanda* goods, or Exportation of goods to prohibited Ports, or the places not designed; together with very many other things relating either to the state or condition of persons Maritime, their rights, their duties, or their defaults.”¹⁸

§ 75. **Submission of the Admiralty.**

This ordinance ceased to be in force at the Restoration, and the common law judges again prohibited the admiralty. The merchants petitioned for a reobservance of the rules of 1632; but neither their petitions, nor Judge Godolphin’s arguments and learning, were regarded; and the civilians, tired of the struggle, appear to have preferred a peace, however disadvantageous, to war, however justly it might be carried on. The violent opinions, first expressed by Sir Edward Coke, and afterwards supported by others with more subserviency than reason, could not be resisted, and the admiralty submitted. It is well remarked by Edwards: “Although so much of the ancient authority of the Admiralty Court has been rendered nugatory in this nineteenth century, that court may look back with pride and observe how well it has survived the conflict;—how the arguments which were put forth with force, by those learned civilians in the sixteenth and seventeenth centuries appear, at last, to be listened to; for now the rule of *locality*, to which it was at-

¹⁸ Godolph, Ad. Juris. 43 to 48.

tempted to confine the jurisdiction of the admiralty, has almost entirely given way to the more rational one of the *subject-matter* to be adjudicated upon."

§ 76. Commissions of the Vice-Admirals.

The commissions to the vice-admirals, issued from the Lord High Admiral, and to the vice-admiralty courts, issued from the High Court of Admiralty, during the next hundred years, while they furnish evidence of the extent of the jurisdiction of the courts to which they were issued, and also evidence of the jurisdiction of the High Court of Admiralty from which they issued, show that, wherever prohibitions could not reach the Admiralty, there its ancient plenary and beneficial jurisdiction was deputed and exercised, originally and on appeal, without restraint.¹⁶

§ 77. Action of the King's Bench.

While it is thus clear that the ancient jurisdiction of the English Admiralty was of a most extended and beneficial character, embracing all maritime causes of action, it is equally true, that by prohibitions on most inconsistent and extraordinary grounds, "granted," as Prynne says, "on sudden motions without solemn argument," the exercise of that jurisdiction was from time to time restrained by the King's Bench within very narrow limits. The mode and character of the opposition to that jurisdiction, we have not treated in detail. The curious inquirer will find all that he can desire on this subject in the great case of *De Lovio v. Boit*, 2 Gallison, 398, and the works and cases there quoted, and referred to and examined by Judge Story, with an affluence of learning and a wisdom and acuteness of criticism, which, in that early period in his judicial career, promised for him that fame, which, afterwards, equalled his highest hopes, and shed a permanent lustre on the judicial history of the nation.

¹⁶ *Vide* those commissions; *post*, chapter IX.

CHAPTER VII.

THE ENGLISH ADMIRALTY AT THE TIME OF THE AMERICAN REVOLUTION, AND SINCE.

§ 78. *Narrow Jurisdiction of the English Admiralty.*

It has been remarked, that our situation as British colonies, previous to the Revolution, and the adoption of the English common law, as interpreted in the English books, did much to influence opinion in this country, in favor of the narrow English rule of admiralty jurisdiction which prevailed at that time. That narrow platform of jurisdiction was only what remained, after centuries of strife between the courts of common law and the Court of Admiralty had resulted in confining the admiralty to the following very inconsiderable class of cases:

To enforce judgments of foreign courts of admiralty, where the person or the goods were within the reach of the court;

Mariners' wages, where the contract was not under seal, and was made in the usual form;

Bottomry, in certain cases and under many restrictions;

Salvage, where the property was not cast on shore;

Cases between part owners disputing about the employment of the ship;

Collisions and injuries to property or persons on the high seas;

Droits of the admiralty.¹

This was all that was left of that large jurisdiction which it had before rightfully exercised for centuries.

§ 79. *Jealousy of Common Law Courts.*

The struggle between these courts originated in the same spirit that attempted to break down the whole system of equity; and none can deny that the courts of common law manifested a great degree of jealousy and hostility, fostered by strong prejudice, and a very imperfect knowledge of the subject. The English Admiralty had always rightfully had jurisdiction over all maritime contracts; and the

¹ *Waring v. Clarke*, 46 U. S. (5 Howard), 441, 452-3; 3 Black. Com. 106.

decisions of the courts of common law, prohibiting its exercise, were neither consistent in themselves nor reconcilable with principle. In those days, when might was right, in courts as well as camps, and jealousy, prejudice, and arrogance, to say nothing of the love of gain, influenced the judicial decisions of judges, had the common law courts had the power to issue writs of prohibition to the Chancellor, and had that high officer been anything less than the highest judicial functionary, and the first subject in the realm, the Court of Chancery would have met the fate of the Court of Admiralty, and would have been stripped of the most useful portion of its jurisdiction.²

§ 80. Jurisdiction of Court of King's Bench.

The Court of King's Bench had power to issue prohibitions, but it had no power to extend or diminish the jurisdiction of the admiralty. That jurisdiction was conferred by the king's prerogative and royal commission, or by statute, or immemorial usage, and not otherwise, and could be limited only in the same manner. If the king's commission, or the proper exercise of the royal prerogative, or a statute, gave the jurisdiction, the King's Bench could not deprive the court of its jurisdiction, that is to say, of its right to take cognizance of causes, although by an improper exercise of irresponsible power, it did prevent the admiralty from exercising the jurisdiction which properly belongs to it. The right of the admiralty depends upon the construction of the grant of jurisdiction alone, no matter how often or for what causes prohibitions may have been issued. The Court of King's Bench had neither legislative nor executive powers which enabled it rightfully to dispense with the law, whether that law were founded in parliamentary or prerogative legislation.

§ 81. Revival of the Jurisdiction.

In 1840 there began a movement for a revival of the ancient English admiralty jurisdiction. In that year the first of the so-called Admiralty Court Acts was passed,³ followed in 1846, 1854, 1861 and 1868 by other Acts,⁴ all tending to give a broader and fuller jurisdiction to the High Court of Admiralty, so that by the

² The Jerusalem, 2 Gall. 345.

³ 3 & 4 Vict. c. 65.

⁴ 9 & 10 Vict. c. 99; 17 & 18 Vict., c. 104; 24 Vict., c. 10; 31 & 32 Vict., c. 71.

year 1873 that court had general jurisdiction of matters of title and mortgage of ships, salvage, towage and necessities, building, equipping and repairing ships, claims on bills of lading and for damage to goods, questions of account between part owners, claims for life salvage and seamen's wages, including master's wages, and jurisdiction of any claim for damage done by any ship.

§ 82. Consolidation of the Courts.

In the year 1873 the High Court of Admiralty was united and consolidated with the Superior Courts of Common Law at Westminster, the Court of Chancery of England, the Court of Probate and the Divorce Court, to form the Supreme Court of Judicature in England, which is divided into the High Court of Justice, for the hearing of original matters, and the High Court of Appeal, for the hearing of appeals. There are also divisions of the High Court of Justice, one of which is known as the Probate, Divorce and Admiralty Division, to which causes of a maritime nature are assigned. But each Division of the High Court has the same jurisdiction, and all of the Judges have equal jurisdiction, so that any judge may hear any case, or may transfer it to another Division. The result of this naturally has been to lessen the distinction between the admiralty and common law jurisdiction, since both kinds of cases may be heard by the same Judge in the same Division of the High Court. As matter of practice, however, maritime cases are assigned to the Probate, Divorce and Admiralty Division, and to the Commercial Court in the Kings Bench Division.

CHAPTER VIII.

THE ADMIRALTY JURISDICTION OF SCOTLAND AND IRELAND.

§ 83. Admiralty Jurisdiction in Scotland.

The admiralty and maritime jurisdiction of the other portions of the Empire of Great Britain, and even of that island, by no means harmonized with this narrow jurisdiction of the High Court of Admiralty of the kingdom of England. In the kingdom of Scotland, and in the American Colonies, the admiralty jurisdiction was of the most extensive and beneficial character.¹

“It is true that in Scotland, before the creation of an admiral after the example of other nations, the Deans of the Gild were ordinarily judges in civil debates betwixt mariner and merchant, as the Water-Bailey betwixt mariner and mariner, like as the High Justice was judge in their criminals. Which actions, all now [A. D. 1682] falling forth betwixt the persons aforesaid, of due appertain to the jurisdiction of the Admiral, and therefore his Judge Depute or Commissar, called Judge Admiral, and none other, should sit, cognosce, determine and minister justice in the aforesaid causes. As likewise upon all complaints, contracts, offences, pleas, charges, assecurations, debts, counts, charter parties, covenants and all other writings concerning lading and unlading of ships, fraughts (freights), hires, money lent upon casualties and hazard at sea, and all other businesses whatsoever amongst seafarers, done on sea, this side sea, or beyond sea, not forgetting the cognition of writs and appeals from other judges, and the causes and actions of reprisals or letters of mark;” and also a most extended police and criminal jurisdiction.²

The Scotch Admiralty Court has always had jurisdiction also in cases arising on Bills of Exchange and other mercantile causes not maritime, and also jurisdiction to arrest a debtor about to depart the country, and compel him to give security to pay the debt.³

¹ *De Lovio v. Boit*, 2 Gal. Rep. 468, 475.

² The quotation in the text is from a Scotch tract, set forth in Malynes, part second, at p. 341, and entitled a Collection of All Sea Laws. See also pp. 47, 48 of that part of Malynes.

³ *Boyd's Proceedings of the Admiralty of Scotland*, 67, 69.

The High Admiral was His Majesty's Justice General upon the seas, and in all ports, harbors, creeks; and upon the navigable rivers below the first bridges and within the flood mark he had jurisdiction in all maritime and seafaring causes, foreign and domestic, whether civil or criminal, within the realm. The jurisdiction of the Court of Admiralty was both civil and criminal. In civil matters, the Judge Admiral was judge in the first instance, in all maritime causes, as in questions on charter parties, freights, salvages, wrecks, bottomries, policies of insurance, and all questions relating to the lading and unlading of ships, or any act to be performed within the bounds of his jurisdiction. He had jurisdiction also in all actions for recovery of goods, or their value, where the goods had been sent by sea from one port to another. In criminal matters, he had the exclusive cognizance in the crimes of mutiny and piracy on ship-board.⁴

§ 84. Admiralty Jurisdiction in Ireland.

There has also been in Ireland, from time immemorial, an Instance Court of Admiralty, and, up to the year 1782, it also exercised the powers of a prize court. By the articles of Union, and by the act of 1782, its jurisdiction was confined to causes civil and maritime only.⁵

It has not been thought necessary to inquire into the details of the actual jurisdiction of the Irish Admiralty, and this passing notice is given only further to illustrate the remark which has been made before, that, in the different portions of the British Empire, admiralty jurisdiction was exercised in a widely different extent, and that "all admiralty and maritime cases" would even then embrace more than the small class permitted to the English Admiralty.

⁴ Dunlap's Prac. 34; Boyd's Proceedings, 4, 5, 6; 2 Brown Civ. & Ad. Law, 30; Bell's Dic. of the Laws of Scotland, 29 (words "Admiral" and "Court of Admiralty"); Erskine's Laws of Scotland, 32.

⁵ 2 Brown Civ. & Ad. Law, 32.

CHAPTER IX.

THE ADMIRALTY AND MARITIME JURISDICTION OF THE BRITISH COLONIES.

§ 85. Courts of the Colonies.

At the time of the American Revolution, in addition to the admiralty and maritime tribunals of England and Scotland, there existed the admiralty courts of the British Colonies.

Under the British Constitution, the statutes of the Imperial Parliament do not bind the colonies, unless they are expressly named, while the king's commission runs through his whole dominions.¹ It is under the king's commissions, that the colonial vice-admiralty courts were created, and their jurisdiction remained as it had been originally granted. Those commissions were issued from the High Court of Admiralty, and thus furnished, at their respective dates, evidence not only of the jurisdiction of the colonial courts to which they were issued, but also of the High Court of Admiralty at home, from which they emanated. Commissions were issued from time to time to the governors, vice-admirals, and judges of vice-admiralty in the colonies. They are of four kinds, the second and fourth of which issued from the High Court:

1st. The commission to the governor as governor, which issued from the office of the Secretary of State.

2d. The commission to the governor as vice-admiral, which issued from the High Court of Admiralty.

3d. The general commission to the governor, and all the principal officers of state, under the act for the more effectual suppression of piracy, which issued from the office of the Secretary of State.

4th. The commission to the judges of the Vice-Admiralty Court, which issued from the High Court of Admiralty.²

§ 86. Commission of the Governor in New York. I.

Many of these commissions may be found in the offices of the

¹ *De Lovio v. Boit*, 2 Gall. 398, 470; *Waring v. Clarke*, 46 U. S. (5 How.) 441.

² *Post*, § 90, *et seq.*; *The Elizabeth*, 1 Hag. Ad. 226; *The Volunteer*, 1 Sumn. 551.

secretaries of state of the different states; but as they are not easily accessible, we shall insert one of each at full length, although some portion of their contents has no particular relation to the matter of the admiralty jurisdiction. They are inserted without regard to chronological order, because, from the imperfection of the records in the State of New York, they are not preserved in that order. The commission of the governor gave him power to create courts of admiralty, according to the commissions which he should receive from the High Court of Admiralty at home.*

§ 87. Commission of the Governor in New York. II.

A large portion of the commission of the governor, as the political head of the colony, has no further relation to this question, than as showing how completely the organization and power of the courts was kept within the control of mere prerogative regulation. That portion of it will not be inserted here. The clauses giving the power to create courts are inserted, to show as well that the common law and admiralty jurisdiction were created in the same manner, as that the admiralty jurisdiction was granted in very general terms.

§ 88. Commission of the Governor.

"William the Third, by the grace of God, of England, Scotland, France, and Ireland, King, defender of the faith, etc. To our right trusty and well beloved Edward Hide, Esq., commonly called Lord Cornbury, greeting. . . . And we do by these presents, give and grant unto you full power and authority, with the advice and consent of our said council, to erect, constitute and establish such and so many courts of judicature and public justice, within our said province and the territories under your government, as you and they shall think fit and necessary for the hearing and determining of all causes, as well criminal as civil, according to law and equity, and for awarding of execution thereupon, with all reasonable and necessary powers, authorities, fees and privileges belonging unto them, as also to appoint and commissionate fit persons, in the several parts of your government, to administer the oaths appointed by act of parliament, to be taken instead of the oaths of allegiance and supremacy and the test, unto such as shall be obliged to take the same, and likewise to require them to subscribe the forementioned association. And we do hereby authorize and empower you to constitute and appoint judges and justices of the peace and other necessary officers and ministers in

* *Waring v. Clarke*, 46 U. S. (5 How.) 441.

our said province, for the better administration of justice and putting the laws in execution, and to administer or cause to be administered such oath or oaths as are usually given for the due execution and performance of offices and places, and for the clearing of truth in judicial causes." . . .

§ 89. Commission of the Governor. II.

"And we do hereby give and grant unto you, the said Lord Cornbury, full power and authority to erect one or more Court or Courts Admiral within our said province and territories for the hearing and determining of all marine and other causes and matters, proper therein to be heard, with all reasonable and necessary powers and authorities, fees and privileges, as also to exercise all powers belonging to the place and office of vice-admiral, of and in all the seas and coasts within your government, according to such commission, authorities and instructions as you shall receive from ourself, under the seal of our admiralty, or from our High Admiral, or commissioners for executing the office of High Admiral of our foreign plantations for the time being."

§ 90. Commission of Vice-Admiral.

The commission to the governor as vice-admiral was very full, granting, in language so clear that it cannot be misunderstood, an admiralty jurisdiction as wide and beneficial as the most zealous supporters of the English Admiralty ever claimed for it.

The commission to Lord Cornbury as vice-admiral was as follows. The original commission is in Latin, and the English translation of similar commissions given by Stokes and Du Ponceau has been here availed of.⁴

"Letters patent granted to the very noble and honorable, Edward, Lord Cornbury, Governor of the provinces and colonies of New York, Connecticut, and East and West New Jersey, in America, and of the same Commander in Chief, for the time being, for the office of Vice-Admiral in the said provinces and colonies of New York, Connecticut, and East and West New Jersey.

"William the Third, by the grace of God, of England, Scotland, France and Ireland, King, and Defender of the faith, to our well beloved, and liege Edward, Lord Cornbury, our Governor of our provinces and colonies of New York, Connecticut, and East and

⁴ Stokes' View of the Constitution of the British Colonies, 166; Du Pon. on Juris. 158.

West New Jersey, in America, and Commander in Chief of said provinces and colonies for the time being, greeting:

“ We confiding very much in your fidelity, care, and circumspection in this behalf, do, by these presents, which are to continue during our pleasure only, constitute and depute you the said Edward, Lord Cornbury, our Captain General and Governor in Chief aforesaid, our Vice-Admiral, commissary, and deputy in the office of Vice-Admiralty, in our provinces and colonies, aforesaid, and the territories depending thereon in America, and in the maritime parts of the same and thereto adjoining whatsoever; with power of taking and receiving all and every the fees, profits, advantages, emoluments, commodities, and appurtenances whatsoever due, and belonging to the said office of Vice-Admiral, commissary, and deputy in our provinces and colonies, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, according to the ordinances and statutes of our High Court of Admiralty in England.

“ And we do hereby remit and grant unto you, the aforesaid Edward, Lord Cornbury, our power and authority in and throughout our provinces and colonies, aforementioned, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, and also throughout all and every the sea shore, public streams, ports, fresh water rivers, creeks, and arms, as well of the sea, as of the rivers and coasts whatsoever of our said provinces and colonies, and the territories depending thereon, and maritime parts whatsoever of the same and thereto adjacent, as well within liberties and franchises, as without.

“ To take cognizance of, and proceed in, all civil and maritime causes, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, accounts, charter parties, agreements, suits, trespasses, injuries, extortions, and demands, and business civil and maritime whatsoever, commenced or to be commenced between merchants, or between owners and proprietors of ships and other vessels, and merchants or others whomsoever, with such owners and proprietors of ships and all other vessels whatsoever, employed or used within the maritime jurisdiction of our vice-admiralty of our said provinces and colonies, and the territories depending thereon, or between any other persons whomsoever, had, made, begun, or contracted for any matter, thing, cause, or business whatsoever, done or to be done within our maritime jurisdiction aforesaid, to-

gether with all and singular their incidents, emergencies, dependencies, annexed or connexed causes whatsoever or howsoever, and such causes, complaints, contracts, and other the premises above said, or any of them, which may happen to arise, be contracted, had or done, to hear and determine according to the rights, statutes, laws, ordinances, and customs anciently observed.

“And moreover, in all and singular complaints, contracts, agreements, causes, and businesses civil and maritime, to be performed beyond the sea, or contracted there, howsoever arising or happening: and also in all and singular other causes and matters, which in any manner whatsoever touch or any way concern, or anciently have and do, or ought to belong unto the maritime jurisdiction of our aforesaid Vice-Admiralty in our said provinces and colonies, and the territories depending thereon, and maritime parts thereof, and to the same adjoining whatsoever; and generally, in all and singular all other causes, suits, crimes, offences, excesses, injuries, complaints, misdemeanors, or suspected misdemeanors, trespasses, regrating, forestalling and maritime businesses whatsoever, throughout the places aforesaid, within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies aforesaid, and the territories depending thereon by sea or water, on the banks or shores of the same howsoever done, committed, perpetrated, or happening.

“And also to inquire by the oaths of honest and lawful men of our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, dwelling both within liberties and franchises and without, as well of all and singular such matters and things, which of right, and by the statutes, laws, ordinances, and the customs anciently observed were wont and ought to be inquired after, as of wreck of the sea, and of all and singular the goods and chattels of whatsoever traitors, pirates, manslaughterers, and felons, howsoever offending within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies, aforementioned, and the territories depending thereon, and of the goods, chattels, and debts of all and singular their maintainers, accessories, councillors, abettors, or assistants whomsoever.

“And also of the goods, debts, and chattels of whatsoever person or persons, felons of themselves, by what means, or howsoever coming to their death within our aforesaid maritime jurisdiction, where-

soever any such goods, debts, and chattels, or any part thereof, by sea, water, or land in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well within liberties and franchises, as without, have been or shall be found forfeited, or to be forfeited, or in being.

“ And moreover, as well of the goods, debts, and chattels, of whatsoever other traitors, felons, and manslaughterers wheresoever offending, and of the goods, debts, and chattels of their maintainers, accessories, counsellors, abettors, or assistants, as of the goods, debts, or chattels of all fugitives, persons convicted, attainted, condemned, outlawed, or howsoever put, or to be put in exigent for treason, felony, manslaughter, or murder, or any other offence or crime whatsoever; and also concerning goods waived, flotson, jetson, lagon, shares and treasure found, or to be found; deodands, and of the goods of all others whatsoever taken, or to be taken, as derelict, or by chance found, or howsoever due, or to be due; and of all other casualties, as well in, upon, or by the sea and shores, creeks or coasts of the sea, or maritime parts, as in, upon, or by all fresh waters, ports, public streams, rivers, or creeks, or places overflown whatsoever, within the ebbing and flowing of the sea or high water, or upon the shores and banks of any of the same within our maritime jurisdiction aforesaid, howsoever, whensoever, or by what means soever arising, happening, or proceeding, or wheresoever such goods, debts, and chattels, or other the premises, or any parcel thereof may, or shall happen to be met with, or found within our maritime jurisdiction aforesaid.

“ And also concerning anchorage, lastage, and ballast of ships, and of fishes royal, namely sturgeons, whales, porpoises, dolphins, kiggs, and grampuses, and general of all other fishes whatsoever, which are of a great or very large bulk or fatness, anciently by right or custom, or any way appertaining or belonging to us.

“ And to ask, require, levy, take, collect, receive, and obtain for the use of us, and to the office of our High Admiral of Great Britain aforesaid for the time being, to keep and preserve the said wreck of the sea, and the goods, debts, and chattels of all and singular other the premises.

“ Together with all, and all manner of fines, mulcts, issues, forfeitures, amerciaments, ransoms, and recognizances, whatsoever, for-

gether with all and singular their incidents, emergencies, dependencies, annexed or connexed causes whatsoever or howsoever, and such causes, complaints, contracts, and other the premises above said, or any of them, which may happen to arise, be contracted, had or done, to hear and determine according to the rights, statutes, laws, ordinances, and customs anciently observed.

“And moreover, in all and singular complaints, contracts, agreements, causes, and businesses civil and maritime, to be performed beyond the sea, or contracted there, howsoever arising or happening: and also in all and singular other causes and matters, which in any manner whatsoever touch or any way concern, or anciently have and do, or ought to belong unto the maritime jurisdiction of our aforesaid Vice-Admiralty in our said provinces and colonies, and the territories depending thereon, and maritime parts thereof, and to the same adjoining whatsoever; and generally, in all and singular all other causes, suits, crimes, offences, excesses, injuries, complaints, misdemeanors, or suspected misdemeanors, trespasses, regrating, forestalling and maritime businesses whatsoever, throughout the places aforesaid, within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies aforesaid, and the territories depending thereon by sea or water, on the banks or shores of the same howsoever done, committed, perpetrated, or happening.

“And also to inquire by the oaths of honest and lawful men of our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and adjoining to them whatsoever, dwelling both within liberties and franchises and without, as well of all and singular such matters and things, which of right, and by the statutes, laws, ordinances, and the customs anciently observed were wont and ought to be inquired after, as of wreck of the sea, and of all and singular the goods and chattels of whatsoever traitors, pirates, manslaughterers, and felons, howsoever offending within the maritime jurisdiction of our Vice-Admiralty of our provinces and colonies, aforementioned, and the territories depending thereon, and of the goods, chattels, and debts of all and singular their maintainers, accessories, councillors, abettors, or assistants whomsoever.

“And also of the goods, debts, and chattels of whatsoever person or persons, felons of themselves, by what means, or howsoever coming to their death within our aforesaid maritime jurisdiction, where-

soever any such goods, debts, and chattels, or any part thereof, by sea, water, or land in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well within liberties and franchises, as without, have been or shall be found forfeited, or to be forfeited, or in being.

“And moreover, as well of the goods, debts, and chattels, of whatsoever other traitors, felons, and manslaughterers wheresoever offending, and of the goods, debts, and chattels of their maintainers, accessories, counsellors, abettors, or assistants, as of the goods, debts, or chattels of all fugitives, persons convicted, attainted, condemned, outlawed, or howsoever put, or to be put in exigent for treason, felony, manslaughter, or murder, or any other offence or crime whatsoever; and also concerning goods waived, flotson, jetson, lagon, shares and treasure found, or to be found; deodands, and of the goods of all others whatsoever taken, or to be taken, as derelict, or by chance found, or howsoever due, or to be due; and of all other casualties, as well in, upon, or by the sea and shores, creeks or coasts of the sea, or maritime parts, as in, upon, or by all fresh waters, ports, public streams, rivers, or creeks, or places overflowed whatsoever, within the ebbing and flowing of the sea or high water, or upon the shores and banks of any of the same within our maritime jurisdiction aforesaid, howsoever, whensoever, or by what means soever arising, happening, or proceeding, or wheresoever such goods, debts, and chattels, or other the premises, or any parcel thereof may, or shall happen to be met with, or found within our maritime jurisdiction aforesaid.

“And also concerning anchorage, lastage, and ballast of ships, and of fishes royal, namely sturgeons, whales, porpoises, dolphins, kiggs, and grampuses, and general of all other fishes whatsoever, which are of a great or very large bulk or fatness, anciently by right or custom, or any way appertaining or belonging to us.

“And to ask, require, levy, take, collect, receive, and obtain for the use of us, and to the office of our High Admiral of Great Britain aforesaid for the time being, to keep and preserve the said wreck of the sea, and the goods, debts, and chattels of all and singular other the premises.

“Together with all, and all manner of fines, mulcts, issues, forfeitures, amerciaments, ransoms, and recognizances, whatsoever, for-

feited, or to be forfeited, and pecuniary punishment for trespasses, crimes, injuries, extortions, contempts, and other misdemeanors whatsoever, howsoever imposed or inflicted, or to be imposed or inflicted for any matter, cause, or thing whatsoever in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjoining, in any Court of our Admiralty there held or to be held, presented or to be presented, assessed, brought, forfeited, or adjudged; and also all amerciaments, issues, fines, perquisites, mulcts, and pecuniary punishments whatsoever, and forfeitures of all manner of recognizances, before you or your lieutenant, deputy or deputies in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, happening or imposed, or to be imposed or inflicted, or by any means assessed, presented, forfeited, or adjudged, or howsoever by reason of the premises, due or to be due in that behalf to us, or to our heirs and successors.

“And further to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use as at the instance of any parties, for agreements or debts, or other causes whatsoever, and to put the same into execution, and to cause and command them to be executed; and also to arrest, and cause and command to be arrested, according to the civil and maritime laws, and ancient customs of our said court, all ships, persons, things, goods, wares and merchandizes, for the premises and every of them, and for other causes whatsoever concerning the same, wheresoever they shall be met with, or found throughout our said provinces and colonies, and the territories depending thereon, and maritime parts thereof and thereto adjoining, as well within liberties and franchises, as without; and likewise for all other agreements, causes or debts, howsoever contracted or arising, so that the goods or persons may be found within our jurisdiction aforesaid.

“And to hear, examine, discuss, and finally determine the same, with their emergencies, dependencies, incidents, annexed and connexed causes and businesses whatsoever; together with all other causes, civil and maritime, and complaints, contracts, and all and every the respective premises whatsoever above expressed, according to the laws and customs aforesaid, and by all other lawful usage, means and methods, according to the best of your skill and knowledge.

“And to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal correction, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid.

“And to do and administer justice, according to the right order, the cause of law, summarily and plainly, looking only into the truth of the facts.

“And to fine, correct, punish, chastise, reform, and to imprison, and cause and command to be imprisoned in any gaols, being within our provinces and colonies, aforesaid, and the territories depending thereon, the parties guilty, and the contemners of the law and jurisdiction of our Admiralty aforesaid, and violators, usurpers, delinquents and contumacious absenters, masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen and artificers whatsoever exercising any kind of maritime affairs, according to the rights, statutes, laws and ordinances, and customs anciently observed; and to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered.

“And to preserve, or cause to be preserved, the public streams, ports, rivers, fresh waters and creeks whatsoever within our maritime jurisdiction aforesaid, in what place soever they be in our provinces and colonies aforesaid, and the territories depending thereon, and maritime parts of the same and thereto adjacent whatsoever, as well for the preservation of our navy royal, and of the fleets and vessels of our kingdom and dominions aforesaid, as of whatsoever fishes increasing in the rivers and places aforesaid.

“And also to keep, and cause to be executed and kept, in our said provinces and colonies, and the territories depending thereon, and maritime parts thereof and thereto adjacent whatsoever, the rights, statutes, laws, ordinances and customs anciently observed.

“And to do, exercise, expedite, and execute all and singular other things in the premises, and every of them, as they by right and according to the laws and statutes, ordinances and customs aforesaid should be done.

“And moreover to reform nets too close, and other unlawful engines or instruments wheresoever, for the catching of fishes whatsoever, by sea or public streams, ports, rivers, fresh waters or creeks whatsoever,

throughout our provinces and colonies aforesaid, and the territories depending thereon, and maritime parts of the same and thereto adjacent, used or exercised, within our maritime jurisdiction aforesaid wheresoever.

“ And to punish and correct the exercisers and occupiers thereof, according to the statutes, laws, ordinances and customs aforesaid.

“ And to pronounce, promulge and interpose all manner of sentences and decrees, and to put the same in execution; with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, or which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages, or our said maritime jurisdiction, or the places or limits of our said Admiralty and cognizance aforementioned, and all other things done, or to be done.

“ With power also to proceed in the same, according to the statutes, laws, ordinances and customs aforesaid, anciently used, as well of mere office mixed or promoted, as at the instance of any party, as the case shall require and seem convenient.

“ And likewise with cognizance and decision of wreck of the sea, and of the death, drowning, and view of dead bodies of all persons howsoever killed or drowned, or murdered, or which shall happen to be killed, drowned, or murdered, or by any other means come to their death, in the sea, or public streams, ports, fresh waters, or creeks, whatsoever, within the flowing of the sea and high water mark, throughout our aforesaid provinces and colonies, and the territories depending thereon, and maritime parts of the same, and thereto adjacent, or elsewhere within our maritime jurisdiction aforesaid.

“ Together with the cognizance of Mayhem in the aforesaid places, within our maritime jurisdiction aforesaid, and flowing of the sea and water there happening; with power also of punishing all delinquents in that kind, according to the exigencies of the law and customs aforesaid.

“ And to do, exercise, expedite, and execute all and singular other things, which in and about the premises only shall be necessary or thought meet, according to the rights, statutes, laws, ordinances and customs aforesaid.

“ With power of deputing and surrogating in your place for the

premises, one or more deputy, or deputies, as often as you shall think fit; and also with power from time to time of naming, appointing, ordaining, assigning, making, and constituting whatsoever other necessary, fit, and convenient officers and ministers under you, for the said office, and execution thereof, in our said provinces and colonies, and the territories depending thereon, and maritime parts of the same, and thereto adjacent whatsoever.

“Saving always the right of our High Court of Admiralty of England, and also of the Judge and Register of the said Court, from whom or either of them it is not our intention in any thing to derogate by these presents; and saving to every one who shall be wronged, or grieved, by any definitive sentence or interlocutory decree, which shall be given in the Vice-Admiralty Court of our provinces and colonies aforesaid, and the territories depending thereon, the right of appealing to our aforesaid High Court of Admiralty of England.

“Provided nevertheless, and under this express condition, that if you, the aforesaid Edward, Lord Cornbury, our Captain-General and Governor in Chief, shall not yearly, to wit, at the end of every year, between the feast of Saint Michael the Archangel and All Saints duly certify, and cause to be effectually certified (if you shall be thereunto required), to us, and our Lieutenant Official, Principals, and Commissary-General and Special, and Judge and President of the High Court of our Admiralty of England, aforesaid, all that which from time to time, by virtue of these presents, you shall do and execute, collect, or receive in the premises, or any of them, together with your full and faithful account thereupon, to be made in an authentic form, and sealed with the Seal of our Office, remaining in your custody, that from thence, and after default therein, these our Letters Patent of the Office of Vice-Admiralty aforesaid, as above granted, shall be null and void, and of no force or effect.

“Further we do, in our name, command all and singular our Governors, Justices, Mayors, Sheriffs, Captains, Marshals, Bailiffs, Keepers of all our Gaols and Prisons, Constables, and all other our Officers and faithful liege subjects whatsoever, and every of them, as well within liberties and franchises, as without, that in and about the execution of the premises, and every of them, they be aiding,

favouring, assisting, submissive and yield obedience, in all things as is fitting to you, the aforesaid Edward, Lord Cornbury, our Captain-General and Governor in Chief of our provinces and colonies aforesaid, and to your Deputy whomsoever, and to all other Officers by you appointed, and to be appointed, of our said Vice-Admiralty aforesaid, and the territories depending thereon, and maritime parts of the same, and thereto adjoining, under pain of the law, and the peril which will fall thereon.

“Given at London, in the High Court of our Admiralty, of England aforesaid, under the Great Seal thereof, this 3d day of October, 1701.”

§ 91. Governor Bellamont's Commission.

There was, next, the commission, or letters patent to the governor and principal officers, under the act of 11th and 12th Wm. III., for the more effectual suppression of piracy.⁵ This authorized the creating or assembling, whenever occasion might require, of admiralty courts for the trial of piracies, felonies, and robberies committed on the sea, or within any harbor, river, creek or place, where the admiral had power, authority, and jurisdiction, according to the civil law and the course of the admiralty. The commission to Governor Bellamont was as follows:

General Admiralty Commission.

“William the Third, by the grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, etc., To our Right trusty and right well beloved cousin Richard, Earle of Bellamont, our Capt. Genl. and Govr. in Chief of our province of New York, and territories depending thereon, in America; and to the Governor or Commander in Chief of the said province of New York for the time being: To our Trusty and well beloved John Nanfan, Esquire, our Lieut. Govr. of the said province of New York, and to our Lieut. Govr. of the said province for the time being: To our Trusty and well beloved, the Govr. of our Collony of Connecticut for the time being: To our Vice Admirall or Vice Admiralls of our Province of New Yorke, East and West New Jersey, and Connecticut, now and for the time being: To our Trusty and well beloved Stephen Cortland, Wm. Smith, Peter Schuyler, John Young, James Graham, Abraham De Peyster, Robt. Livingston, Samuel Staats, John Carbell,

⁵ 6 Evans' Stat. 126; Stokes' Colonies, 231-234.

and Robert Walters, Esqs., members of our council in the said province of New Yorke, during their continuance in our said council, and to the members of our council in the said Island for the time being: To our Chief Justice of our province of New York, now and for the time being: To our Judge or Judges of the Vice Admiralty in the said province New Yorke, East and West New Jersey, and Connecticut, now and for the time being: To our trusty and well beloved, the Captains and Commanders of our ships of Warr within the Admiralty Jurisdiction of the said provinces of New York, East and West New Jersey, and Connecticut, now and for the time being: To our Trusty and well beloved, our Secretary of the said province of New York, now and for the time being: To our Trusty and well beloved Thomas Weaver, Esquire, Receiver of our Revenue of our said province of New Yorke, and to the receiver of our revenue in the said province for the time being: To our Trusty and well beloved Patrick Mayne and Edward Randolph, Esqrs., Surveyors Genl. of our Customs in America and to the Surveyors General of our customs in America for the time being: To our trusty and well beloved, the Collectors of our plantation duties in the said provinces of New York, East and West New Jersey, and Connecticut, appointed in pursuance of an act made in the Twenty-fifth year of the reign of our Royal Uncle, King Charles the Second, for the better securing the plantation trade, now and for the time being: and to our trusty and well beloved George Larbin, Esquire, Greeting:

“Whereas, by an act passed last session of parliament, entitled an act for the more effectual suppressing of piracy, it is, amongst other things, enacted, that all piracies, felonies and robberies, committed in or upon the sea, or in any haven, river, creek, or place where the Admiral or Admiralls have power, authority or jurisdiction, may be examined, enquired of, tryed, heard, and determined and adjudged, according to the directions of the said act, in any place at sea, or upon the land, in any of our Islands, plantations, Colonies, Dominions, forts or factories, to be appointed for that purpose by our Commission or Commissions, under the great seal of England, or the Seal of the Admiralty of England, directed to all or any of the Admirals, Vice Admirals, Rear Admirals, Judges of Vice Admirals, or Commanders of any of our Ships of War; and also to all or any such person or persons, officer or officers, by name, or for the time being, as we should think fit to appoint, which said Commissioners shall have full

power, jointly or severally, by warrant under the hand and seal of them, or any of them, to commit to safe custody any person or persons against whom Information of piracy, Robbery, or felony upon the sea, shall be given upon oath; and to call and assemble a Court of Admiralty on Shipboard, or upon the land, when, and as often as occasion shall require, which Court shall consist of seven persons, at least. And it is further enacted, that if so many of the persons aforesaid cannot conveniently be assembled, any three of the aforesaid persons, whereof the President or Chief of some English factory, or the Govr., Lieut. Govr., or member of our Council, in any of the plantations or colonies aforesaid, or Commanders of some of our Ships, is always to be one, shall have full power and authority, by virtue of the said act, to call and assemble any other persons on Ship board, or upon the land, to make up the number of seven. And it is provided, that no persons but such as are known merchants, factors, or planters, or such as the Captains, Lieuts., or warrant officers, in any of our Ships of war, or Captains, Masters or Mates, of some English Ship, shall be capable of being so called, and sitting and voting in the said Court.*

“ And it is further enacted, that such persons, called and assembled as aforesaid, shall have full power and authority, according to the course of the Admiralty, to issue warrants for bringing any persons accused of pyracry or Robbery before them, to be tryed, heard, and adjudged, and to summon witnesses, and to take informations and Examinations of witnesses upon their oath, and to do all things necessary for the hearing and final determination of any case of pyracry, robbery and felony, and to give Sentence and Judgment of death, and to award execution of the offenders convicted and attainted as aforesaid, according to the will, acts, and the methods and rules of the Admiralty; and that all and every person and persons so convicted and attainted of pyracry and robbery, shall have and suffer such losses of lands, goods, and chattels, as if they had been attainted and convicted of any piracies, felonies and robberies, according to a statute made in the 28th year of the reign of King Henry the Eighth, for tryalls of pyracries or Robberies upon the high sea.

“ Now Know Ye, that we, in pursuance of the said act of our special grace, certain knowledge and mere motion, have made, constituted

* 6 Evans' Stat. 126.

and appointed, and by these presents do make, constitute and appoint you, the said Richard, Earl of Bellamont, and the Govr. or Commander in Chief of the said province of New York for the time being; John Nanfan, and the Lieut. Govr. of the said province for the time being; the Govr. of our Collony of Connecticut for the time being; the Vice Admiral or Vice Admirals of our said province of New Yorke, East and West New Jersey, and Connecticut, for the time now, and for the time being; Stephen Cortland, William Smith, Peter Schuyler, John Young, James Graham, A. Depeyster, Robert Livingston, Saml. Staats, John Carbill, and Robert Walters, members of our Council in the said province of New Yorke, during their continuance in the said Council, and the members of our Council in the said province for the time being: our Chief Justice in our said province of New York for the time being; our Judge or Judges of the Vice Admiralty in the said provinces of New Yorke, East and West New Jersey and Connecticut, now and for the time being; the Capt. and Commander of our Ships of War within the Admiralty Jurisdiction of the said provinces of New Yorke, East and West New Jerseys and Connecticut, now and for the time being; the Secretary of the said province of New Yorke, now and for the time being: Thomas Weaver, and the receiver of our revenue of the province of New York for the time being; Patrick Mayne and Edward Randolph, and the Surveyor General of our Customs in America for the time being; our Collectors of our plantation duties in the said provinces of New York, and East and West New Jerseys and Connecticut, for the time being, and George Larbin, to be our Commissioners at the said several provinces of New York, East and West New Jersey, and Connecticut, for the examining, enquiring of, trying, hearing, and determining and adjudging, according to the directions of the said act, in any place at sea, or upon the land, at the said provinces of New York, East and West New Jerseys, and Connecticut, all pyracies, felonies, and robberies, committed, or which shall be committed, in or upon the sea, or within any haven, river, creek, or place where the Admiral or Admirals have power, authority, or jurisdiction. And you, the said Richard, Earl of Bellamont, and the Govr. or Commander in Chief of the said province of New York, for the time being; John Nanfan, and the Lieut. Govr. or Commander in Chief of the said province, for the time being; the Govr. of our Collony of Connecticut for the time being; the Vice Admiral or Vice Admirals of our said provinces of New Yorke, East and West New

Jersey, and Connecticut, now, and for the time being; Stephen Cortland, William Smith, Peter Schuyler, John Young, James Graham, Abraham Depeyster, Robert Livingston, Samuel Staats, John Carbill and Robert Walters, members of our Council in the said province, during their continuance in the said Council, and the members of our said Council in the said province, for the time being; our Chief Justice in our said province of New York, for the time being; our Judge or Judges of the Vice Admiralty in the said provinces of New York, East and West New Jersey and Connecticut, now and for the time being; the Captains and Commanders of our Ships of War within the Admiralty Jurisdiction of the said provinces of New York, East and West New Jerseys and Connecticut, now and for the time being; the Secretary of the said province of New Yorke, now and for the time being; Thomas Weaver, and the receiver of our revenue of our said province of New York, for the time being; Patrick Mayne, and Edward Randolph, and the Surveyors Genl. of our Customes in America; our Collectors of our plantation duties in the said provinces of New Yorke, East and West New Jersey and Connecticut, for the time being; George Larkin, our Commissioners at the said provinces of New York, East and West New Jersey and Connecticut, for the purposes herein above mentioned; we do make, ordain and constitute, by these presents:

“Hereby giving and granting unto you, our said Commissioners, jointly or severally, or any one of you, by warrant under the hand and seal of you, or any one of you, full power and authority to commit to safe custody any person or persons against whom Information of piracy, robbery, or felony upon the sea, shall be given upon oath, which oath you, or any one of you, shall have full power and are hereby required to administer to all, and assemble a Court of Admiralty on Ship board, or upon the land, when, and as often as occasion shall require (which Court, our will and pleasure is), shall consist of seven persons at the least, and if so many of you, our said Commissioners, cannot conveniently be assembled, any three or more of you, whereof you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey, or Connecticut, or either of the said places for the time being, always to be one, shall have full power and authority, by virtue of the said act and of these persons, to call and assemble any other persons on ship board, or upon the land, to make up the number of seven; provided,

that no persons but such as are known merchants, factors, or persons, or such as are Captains, Lieutenants, or warrant officers in any of our ships of war, Captains, Masters, or Mates, of some English Ships, shall be capable of being so called, sitting and voting in the said court.

“ And our further will and pleasure is, and we do hereby expressly declare and command, that such persons, called and assembled as aforesaid, shall have full power and authority, according to the course of the Admiralty, to issue warrants for bringing any persons accused of piracy or robbery before them, to be tried, heard, and adjudged, and to summon witnesses, and to take informations and examinations of witnesses upon their oath, and to do all things necessary for the hearing and final determination of any case of piracy, robbery, or felony upon the sea, and to give sentence and judgment of death, and to award execution of the offenders, convicted and attainted as aforesaid, according to the civil laws and the methods and rules of the Admiralty; and that all and every person or persons so convicted or attainted of pyracies and robbery, shall have and suffer such losses of lands, goods, and chattels, as if they had been attainted and convicted of any pyracies, felonies, and robberies, according to the aforementioned statute made in the reign of King Henry the Eighth.

“ And our express will and pleasure is, and we do hereby direct and command, that so soon as any Court shall be assembled as aforesaid, either on ship board, or upon the land, this our commission shall first be openly read, and the said Court, then and there, shall be solemnly called and proclaimed, and then you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey or Connecticut, or either of the said places for the time being—shall, in the first place, publicly in open Court, take the oath appointed in the said act; and you, the said Richard, Earl of Bellamont, or the Govr. or Commander in Chief of New Yorke, East and West New Jersey, or Connecticut, or either of the said places, for the time being, having taken the oath in manner and form aforesaid, shall individually administer the same to every person who shall sit and have and give a voice in the said Court, upon the trial of such prisoner or prisoners as aforesaid. And lastly, we do hereby direct, empower and require you, our said Commissioners, to proceed, act, adjudge and determine in all things according to your

powers, authority and directions of the above recited act, and of these presents; and the entry or enrollment thereof, shall be unto you, and each and every of you, for so doing, a sufficient warrant and discharge.

“In witness whereof, we have caused these our letters to be made patent. Witness ourself, at Westminster, the 23d day of November, in the twelfth year of our reign.”

§ 92. Judge Morris' Commission.

The commissions to the judges of the vice-admiralty courts were equally full and explicit in their grant of jurisdiction, and it was under these commissions that the judicial powers of the admiralty, in civil causes, were actually administered in the colonies, from the beginning to the time of our Revolution.

The commission to Hon. Richard Morris, dated 15th Oct. 1762, was as follows:—

Commission of the Vice-Admiralty Judge.

“Letters patent granted to Richard Morris, Esq., for the office of Judge of the respective Courts of the Provinces and Colonys of New York, Connecticut, and East and West Jerseys, in America.

“George the Third, by the grace of God, of Great Britain, France and Ireland, King, defender of the faith: To our beloved Richard Morris, Esquire, greeting: We do by these presents, make, ordain, nominate and appoint you, the said Richard Morris, Esquire, to be our Commissary in our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and Territories thereunto belonging, in the room of the former judge, deceased, hereby granting unto you full power to take cognizance of, and proceed in all causes civil and maritime, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, policies of assurance, accounts, charter parties,⁷ agreements, bills of loading of ships, and all matters and contracts which in any manner whatsoever, relate to freight due for ships, hired or let out, transport money or maritime usury (otherwise bottomry), or which do any ways concern suits, trespasses, injuries, extortions, demands, and affairs civil and maritime whatsoever, between merchants or

⁷ Vide The Elizabeth, 1 Hag. Ad. 226.

between owners and proprietors of ships, or other vessels, and merchants, or other persons whomsoever, with such owners and proprietors of ships or other vessels whatsoever, employed or used, or between any other persons howsoever had, made, began, or contracted for any matter, cause or thing, business, or injury whatsoever, done or to be done as well in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water mark, as upon any of the shores, or banks adjoining to them or either of them, together with all and singular their incidents, emergencies, dependencies annexed and connexed causes whatsoever; and such causes, complaints, contracts and other the premises aforesaid, or any of them howsoever the same may happen to arise, be contracted, had, or done, to hear, and determine (according to the civil and maritime laws and customs of the High Court of Admiralty in England), in our said provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and territories thereunto belonging whatsoever, and also with power to sit and hold courts in any cities, towns, and places in our provinces and colonys of New York, Connecticut, and East and West Jerseys, in America aforesaid, for the having and determining of all such causes and businesses, together with all and singular their incidents, emergencies, dependencies annexed and connexed causes whatsoever, and to proceed judicially and according to law, in administering justice therein.

“ And moreover, to compel witnesses, in case they withdraw themselves for interest, fear, favor, or ill-will, or any other cause whatsoever, to give evidence to the truth in all and every the causes above-mentioned, according to the exigences of the law. And further, to take all manner of recognizances, cautions, obligations, and stipulations, as well to our use, as at the instance of any parties for agreements or debts and other causes and businesses whatsoever, and to put the same in execution, and to cause and command them to be executed. Also, duly to search and enquire of and concerning all goods of traitors, pirates, manslaughterers, felons, fugitives and felons of themselves, and concerning the bodies of persons drowned, killed, or by any other means coming to their death in the sea, or in any ports, rivers, public streams, or creeks, and places overflowed; and also concerning mayhem happening in the aforesaid places, and engines, toils and nets prohibited and unlawful, and the occupiers

thereof. And moreover, concerning fishes royal, namely, whales, kiggs, grampusses, dolphins, sturgeons, and all other fishes whatsoever, which are of a great or very large bulk or fatness, by right or custom any ways used, belonging to us and to the office of our High Admiral of England.

“And also of and concerning all casualties at sea, goods wrecked, flotzon, jetson, lagon, shares, things cast overboard and wrecked of the sea, and all goods taken, or to be taken as derelict, or by chance found or to be found; and all other trespasses, misdemeanors, offences, enormities, and maritime crimes whatsoever, done and committed, or to be done and committed as well in and upon the high seas, as all ports, rivers, fresh waters, and creeks, and shores of the sea to high water mark, from all first bridges towards the sea, in and throughout our said provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, and maritime coasts thereunto belonging, howsoever, whensoever, or by what means soever arising or happening.

“And all such things as are discovered and found out, as also all fines, mulcts, amersements and compositions due and to be due in that behalf; to tax, moderate, demand, collect and levy, and to cause the same to be demanded, levied, and collected, and according to law to compel and command them to be paid.

“And also to proceed in all and every the causes and businesses above recited, and in all other contracts, causes, contempts and offences whatsoever, howsoever contracted or arising (so that the goods or persons of the debtors may be found within the jurisdiction of the Vice-Admiralty, in our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, aforesaid), according to the civil and maritime laws and customs of our said High Court of Admiralty, of England, anciently used, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge. And all such causes and contracts to hear, examine, discuss, and finally determine, saving, nevertheless, the right of appealing to our aforesaid High Court of Admiralty of England, and to the Judge or President of the said court, for the time being. And saving also the right of our said High Court of Admiralty of England, and also of the Judge and Register of the

same Court, from whom, or either of them, it is not our intention in anything to derogate by these presents.

“And also to arrest, and cause, and command to be arrested, all ships, persons, things, goods, wares and merchandizes for the premises, and every of them, and for other causes whatsoever, concerning the same, wheresoever they shall be met with, or found, within our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America aforesaid, and territories thereof, either within liberties, or without, and to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal coercion, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid; and to do and minister justice according to the right order and course of the law, summarily and plainly, looking only into the truth of the fact.

“And we empower you in this behalf, to fine, correct, punish, chastise, and reform, and imprison, and cause and command to be imprisoned, in any gaols, being within our provinces and colonies of New York, Connecticut, and East and West Jerseys, in America, aforesaid, and maritime places of the same, the parties guilty, and violators of the law and jurisdiction of our admiralty aforesaid, and usurpers, delinquents, and contumacious absentees, masters of ships, mariners, rowers, fishermen, shipwrights, and all other workmen and artificers whomsoever, exercising any kind of maritime affairs, as well according to the aforementioned civil and maritime laws, and ordinances, and customs aforesaid, and their demerits, as according to the statutes and ordinances aforesaid, and those of our kingdom of Great Britain, for the Admiralty of England, in that behalf made and provided.

“And to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered and to promulge and interpose all manner of sentences and decrees, and to put the same in execution, with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relate to the sea, and which any manner of ways respect or concern the sea, or passage over the same, or naval or maritime voyages performed, or to be performed, or the maritime jurisdiction

above said, with power also to proceed in the same according to the civil and maritime laws and customs of our aforesaid Court, anciently used as well those of mere office mixt or promoted, as at the instance of any party, as the case shall require and seem convenient.

“And we do by these presents (which are to continue during our royal will and pleasure only), further give and grant unto you, Richard Morris, Esquire, our said Commissary, the power of taking and receiving all and every, the wages, fees, profits, advantages and commodities whatsoever, in any manner due and anciently belonging to the said office, according to the custom of our High Court of Admiralty of England, committing unto you our power and authority concerning all and singular, the premises in the several places above expressed (saving in all things the prerogative of our High Court of Admiralty of England aforesaid), together with power of deputing and surrogating in your place for and concerning the premises, one or more deputy or deputies, as often as you shall think fit.

“Further, we do in our name command, and firmly and strictly charge, all and singular, our Governors, Commanders, Justices of the Peace, Mayors, Sheriffs, Marshals, Keepers of all our Gaols and Prisons, Bailiffs, Constables, and all other our officers and ministers and faithful liege subjects, in and throughout our aforesaid province and colonies of New York, Connecticut, and East and West Jerseys, in America, and the territories thereunto belonging; that in the execution of this our commission, they be from time to time aiding, assisting, and yield obedience in all things, as is fitting, unto you and your deputy whomsoever, under pain of the law and the peril which will fall thereon. Given at London, in the High Court of our Admiralty aforesaid, under the great seal thereof, the sixteenth day of October, in the year of our Lord, one thousand seven hundred and sixty-two, and of our reign the second.”

His predecessor, Lewis Morris, held the office from 1738, under a commission in the same words. These commissions were translations of the commissions of Roger Mompesson and Francis Harrison, who had previously filled this office; and they embraced the colonies from Delaware to Massachusetts inclusive.⁸

⁸ A memorandum of other commissions is here inserted, to show their territorial extent. They are to be found in the office of the Secretary of State of New York. (Note continued on next page.)

§ 93. Force of these Commissions.

In these commissions and letters patent were found the source, extent, and definition of the admiralty and maritime jurisdiction in the colonies. We are not aware, that, up to the Revolution, any British statute in relation to the admiralty jurisdiction named the colonies; and the well known principles that statutes do not bind the colonies unless they are named, and that the king's commission runs through his whole dominions, are sufficient to make these commissions the legitimate source and law of the admiralty jurisdiction in the colonies. They declare that jurisdiction to extend to all causes, civil and maritime, embracing charter parties, bills of lading, policies of assurance, accounts, debts, exchanges, agreements, complaints, offences, and all matters which in any manner whatsoever relate to freight, transport money, maritime loans, bottomry, trespasses, injuries, extortions, demands and affairs whatsoever, civil and maritime. These general words are of the most comprehensive character, and include all matters which are in their nature maritime, while all those causes of which jurisdiction has been denied to the English Admiralty, are especially enumerated as admiralty and maritime causes.*

§ 94. Local Extent of Their Jurisdiction.

When we look, also, to the extent of this jurisdiction, so far as place is concerned, we find it equally extensive, extending to everything done in, upon, or by the sea, or public streams, or fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the

James, Duke of York, etc., to Thomas Dongan, commission as Governor of New York and the Islands, dated September 30, 1682. His commission, as vice-admiral for the same, is dated October 3, 1682.

James II., to Edmund Andross, commission as Governor of New York and New England, April 7, 1688.

William and Mary, to Henry Sloughter, commission as Governor, dated January 4, 1689.

The same to Benj. Fletcher, commission as Vice-Admiral of New York, East and West New Jersey, New Castle and dependencies, dated 1693.

William III., to the Earl of Bellamont, commission of Vice-Admiral of New York, Massachusetts Bay, New Hampshire and dependencies, 1698.

Commission of Roger Mompesson, Judge of the Court of Vice-Admiralty in Massachusetts Bay, New Hampshire. Connecticut. Rhode Island. the Jerseys. New York and Pennsylvania, and dependencies, April 1, 1702.

George I., to Francis Harrison, commission as Judge of the Court of Vice-Admiralty of New York, 13th February, 1721.

George II., to Lewis Morris, commission as Judge of the Vice-Admiralty Courts of New York, Connecticut, and East and West Jerseys, 16th January, 1738.

* *Ante*, §§ 46-48, 90, 92; 1 Black. Com. 106, 107, 108.

ebbing and flowing of the sea, or high water mark, from all first bridges toward the sea.

§ 95. Jurisdiction over Persons.

So far as persons are concerned, it is also equally extensive, embracing all demands and affairs between merchants, or merchants and owners of ships or other vessels, and other persons whomsoever, for any matter, cause or thing, business, or injury whatsoever, done as well in, upon, or by the sea, or public streams, or fresh water, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high water-mark, as upon any of the shores or banks adjoining to them. This plainly embraces all classes of persons having any relation to maritime transactions; those who build and furnish vessels; those who equip, man and supply them; those who load and unload them; those who freight them; those who are employed in their service, to navigate or to preserve them, or to perform the various functions necessary or convenient to be performed, to enable the vessel in the best manner to answer the purposes to which she is devoted; and also those who injure her, or violate their duty or obligations to her,—a jurisdiction, to all intents and purposes, equal to that claimed by the admiralty, and set forth in so much detail by Dr. Godolphin. Indeed, it is not possible for the English language to make the grant clearer, or broader, or stronger.

§ 96. Business of Vice Admiralty Courts.

These commissions were issued and acted under, in their widest interpretation, during the whole period of colonial government, here and elsewhere. The actual business of the vice-admiralty courts, as shown by their records, up to the time of the Revolution, shows that this extended jurisdiction was not dormant, but active.¹⁰

§ 97. Jurisdiction complained of.

It has indeed been said, that this extensive jurisdiction of the admiralty in the colonies was the subject of complaint at the time of the Revolution; and it is undoubtedly true, that the extension of the admiralty jurisdiction beyond its ancient limits was, in some petitions and public documents, stated as one of the grievances of the colonies. The difficulty with the mother country grew out of the imposition of taxes, and the collection of revenue; and the whole of that jurisdiction was given to the admiralty, as was also trespass on the king's lands,

¹⁰ Stokes' View of the Const. of the British Colonies, 270; Dunlap's Ad. Prac. 35, 37; The Tilton, 5 Mason. 465.

and other matters which were peculiarly offensive. "It was ordained," says the old Congress in their list of grievances, "that whenever offences should be committed in the colonies, against particular acts imposing duties and restrictions upon trade, the prosecutor might bring his action for the penalties in the Court of Admiralty." These were in no sense admiralty and maritime cases, and it was this recent extension beyond the ancient limits—the limits of those commissions—of which the colonies complained, and not the proper exercise of admiralty and maritime jurisdiction which had been practised from the earliest times; and the fact that the constitution uses the words "*all* cases of admiralty and maritime jurisdiction," taken in connection with those complaints, shows that the convention intended that the word *all* as well as the word *maritime* should have its proper signification.¹¹

¹¹ *Waring v. Clarke*, 46 U. S. (5 How.) 456; *id.* 441, 484.

CHAPTER X.

THE JURISDICTION OF THE STATE COURTS OF ADMIRALTY.

§ 98. Admiralty Courts of the States.

At the time of the Revolution each state assumed for itself all the powers of sovereignty, including all judicial powers in their greatest plenitude, except so far as they were limited by the Articles of Confederation. In some of the states in which an admiralty court had previously existed, the court was retained, the judge being appointed by the newly constituted state, by a simple commission, as Judge of the Court of Admiralty. No statute had specified his powers, and his commission was silent on the subject. He was appointed to exercise the same powers as the colonial courts had exercised. In some of the states, as in New York, the statute 15 Rich. II. was enacted, and in others the jurisdiction remained unchanged. Thus, in different states, the constitutions of the admiralty courts and the limits of the admiralty jurisdiction were widely different. In some of them the court was abolished altogether; and in others new courts were established with powers regulated by statute.¹

§ 99. Statute of Pennsylvania.

In Pennsylvania, an act for establishing a court of admiralty was passed Sept. 9, 1778, another for regulating and establishing admiralty jurisdiction in March, 1780. By this latter act it was enacted that the judge should "hold a Court of Admiralty, and therein have cognizance of all controversies, suits and pleas of maritime jurisdiction, not cognizable at the common law, offences and crimes other than contempts against said court only excepted, and thereupon shall pass sentence, and decree according as the maritime law and the law of nations, and the laws of this commonwealth shall require."

By section 22, it was enacted that "all and every, the proceedings of the court of admiralty of this commonwealth, shall be liable to the prohibition of the Supreme Court of Judicature in like manner,

¹ *Ante*, § 23; 1 Greenl. Laws of N. Y. 11, 18, 150, 152, 338.

and with like effect as the prohibition of the Court of King's Bench in England, in like cases." ²

§ 100. Statute of New Jersey.

In New Jersey, an act regulating and establishing admiralty jurisdiction, was passed in 1781, which provided that the Judge of the Admiralty should "hold a Court of Admiralty, and therein have cognizance in all cases of prize, capture and re-capture upon the water, from enemies, or by way of reprisal, or from pirates, and in general of all controversies, suits and pleas of Maritime Jurisdiction, and thereupon the said Judge shall pass sentence and decree according to the maritime law and the law of nations, and the ordinances of the Honorable, the Congress of the United States of America, and the laws of this State."

The second section provided that all causes should be tried by a jury. The 20th section established the same rule as to prohibitions as the Pennsylvania act.³

§ 101. Statute of Maryland.

In Maryland, a court of admiralty was established in 1776, for the trial of captures and seizures, with full power to take cognizance of all libels on account of such captures and seizures and to proceed to a final determination, and decree thereupon. . . . "The process and proceeding to be as usual in courts of admiralty, but if either party demand a jury on any material controverted fact," a jury was to be summoned.⁴

§ 102. Statute of Virginia.

Virginia passed an act in 1779, as follows:—

"Be it enacted by the General Assembly, That the Court of Admiralty to consist of three judges, any two of whom are declared to be a sufficient number to constitute a court, shall have jurisdiction of all maritime causes, except those wherein parties may be accused of capital offences, now depending and hereafter to be brought before them." It was expressly provided that such court was to be "governed in their proceedings and decisions by the regulations of the Congress of the United States of America; by the acts of the general assembly; by the *laws of Oleron and the Rhodian and Imperial Laws, so far as they have been heretofore observed in the English*

² Laws of Pennsylvania, 1778.

³ Laws of New Jersey, 1781.

⁴ Laws of Maryland, 1776.

Courts of Admiralty; and by the laws of nature and nations,"—a wide and beneficial jurisdiction. No one can fail to observe how distinctly the ancient ordinances and maritime laws, the civil law, and the former practices of the English Admiralty, are adopted instead of the narrow limit observed by the English Admiralty at that time.⁵

§ 103. Statute of Rhode Island.

In 1647 the first General Assembly of Rhode Island (then called Providence Plantations), passed an Ordinance reading as follows: "It is ordered that the Sea Laws, otherwise called Laws of Oleron, shall be in force among us, for the benefit of seamen upon the island; and the chief officers in the town shall have power to summon the Court and determine the cause or causes presented."

This order remained in force certainly till Rhode Island adopted the Constitution of the United States on May 29, 1790.⁶

§ 104. Diversity in State Statutes.

These references, without necessarily being exhaustive, are sufficient fully to establish that diversity which could hardly fail to exist in twelve different states, which, although friendly and united for certain purposes, were, nevertheless, independent of, and foreign to, each other.

With this diversity existing, it could hardly be contended that the phrase, *all cases of admiralty and maritime jurisdiction*, was to include only the cases so-called in some particular state which was not pointed out, much less to perpetuate in each state its peculiar law of admiralty jurisdiction; thus making diversity instead of uniformity of admiralty jurisdiction a portion of our organic law, and requiring the constitutional grant to the general government to receive a different construction in the different states. Such a state of things must have made the judicial system of the United States entirely impracticable. In this view of the state courts of admiralty, the grant must have been intended to embrace a general maritime jurisdiction.

⁵ Laws of Virginia, 1779, ch. 26; *Waring v. Clarke*, 46 U. S. (5 How.) 474; *The Tilton*, 5 Mason, 465.

⁶ We are indebted for this information to Amasa M. Eaton, Esq., of Providence, R. I., who gave as his authority 1 Bartlett's Col. Records of R. I., p. 151, and a pamphlet published by Judge Staples in 1847, entitled "The Proceedings of the First General Assembly of 'The Incorporation of Providence Plantations.'"

If all the states, before the adoption of the constitution, had re-enacted the statute 15 Rich. II., it is not perceived how it could have had any influence on the construction of the constitution. If the states, without exception, had abolished their courts of admiralty, and swept away all their admiralty and maritime jurisdiction before the constitution was framed, such legislation, instead of rendering useless or nugatory the grant in question, would only have rendered it so much the more necessary. And on the same principle, any modification or limitation of the state jurisdiction would have no effect on the construction of the constitutional grant. Cases of a certain class would be still maritime cases, and it would be none the less important that they should be subject to the Federal judiciary, to secure that equal administration of the maritime law, and that uniformity and nationality of decision under it, which would promote the harmony of the commercial world, of which the states formed an important part. And it would be none the less certain that a grant to the general government of jurisdiction in all such cases would make them all subjects of national jurisdiction, to be distributed to such courts, and proceeded with *in rem* or *in personam*, with or without a jury, in such manner as Congress should provide.⁷

⁷ Martin v. Hunter's Lessee, 14 U. S. (1 Wheat.) 304, Waring v. Clarke, 46 U. S. (5 How.) 441; New Jersey Steam Nav. Co. v. Merchants' Bank, 47 U. S. (6 How.) 344, 385.

CHAPTER XI.

THE ADMIRALTY AND MARITIME JURISDICTION OF EUROPE— THE ANCIENT CODES.

§ 105. Maritime Law of France.

The marine ordinances of France have always been held in deservedly high estimation. Her wisest statesmen and monarchs have all along, through many centuries, given the most profound attention to the subject of maritime law; and, under the administration of courts of admiralty, filled by the ablest judges, a system of maritime law has been there built up more perfectly than in any other country; while at the same time, commentators and jurisconsults of most various learning, and most profound and practical reflection, have been the cause and the effect of this constant attention to the best interests of maritime commerce. Cleirac says the marine ordinances of France are of the highest authority, and that all the princes and republics of Europe, on the ocean, have adopted or followed them, and that they are general, and as such observed by all Christian Europe, and are also conformed to the Roman civil law and the customs of the Mediterranean Sea. They are thus by this great authority declared to be a part of the general maritime law.¹

The jurisdiction of the French Admiralty has always been of the widest and most salutary character.

§ 106. Ordonnance de la Marine of 1681.

“The judges of the Admiralty,” says the Ordonnance, “shall take cognizance, preferably to all others, and between all persons of whatever quality or condition, even though privileged, French and strangers, as well in demanding as defending, of all that concerns the construction, tackle and furniture, arming, victualling, and manning, sale and adjudication of ships.

¹ Ord. de la Marine, L. I. tit. 2, arts. 1-11; Merville Com. 13-25; 1 Valin, 112-151; Cleirac, Les Us et Coutumes de la Mer, Jurisdiction de la Marine, 316.

“We declare them competent judges of all actions, proceeding from charter parties, freighting, bills of lading, freight, engaging and wages of seamen, and victuals furnished to them by order of the master during the manning of ships, together with policies of insurance and obligations of bottomry, or on the return from a voyage, and generally of all contracts concerning the commerce of the sea, (notwithstanding all submission and privileges to the contrary).

“They shall likewise take cognizance of prizes taken at sea, wrecks, shipwrecks, and stranded ships, of jettison and contribution of averages, and of damages happened to ships and their lading, and also of inventories and deliverances of assets, left in ships by persons dying at sea.

“They shall likewise take cognizance of the dues for licences, thirds, tenths, sea marks, anchorage and others belonging to the Admiral, and of those which shall be levied or pretended by the lords of manors, or other private persons near the sea, upon the fisheries or fish, and upon goods or ships going out or coming into port.

“The cognizance of fishing in the sea and salt water, and the mouths of rivers shall belong to them, and likewise that of parks and fisheries; and they shall also take cognizance of the quality of nets and lines and of the buying and selling of fish in the boats, or upon the shore, ports, or harbors.

“They shall likewise take cognizance of damages done by ships to the fisheries, either upon the coasts or in navigable rivers, and of those that the ships shall receive from them, and likewise of the ways appointed for hauling up ships coming from the sea if there be no regulation, title or possession to the contrary.

“They shall also take cognizance of the damages done to the keys, banks, moles, palisadoes, and other works cast up against the violence of the sea, and shall take care that the depth of the ports and roads be preserved and kept clean.

“They shall take up the bodies of drowned persons, and shall draw up a report of the condition of the corpses found at sea and on the sand, or in the ports, as likewise of the drowning of mariners sailing in navigable rivers.

“They shall be present at the musters and reviews of the inhabitants of the parishes subject to the sea watch, and shall take

cognizance of all differences arising upon that account, and likewise of crimes committed by them that are upon the guard of the coasts, while they are under arms.

“They shall also take cognizance of piracies and robberies, and desertions of seamen, and generally of all crimes and offences committed upon the sea, its ports, harbors and shores.”²

§ 107. Other European Codes.

These various codes and systems cannot but have been familiar to the framers of the constitution; and, for the purpose of this treatise, it is not necessary to inquire further into the jurisdiction of the admirals, or of the admiralty courts of the various commercial nations of the world. They will be found to differ considerably in the mere admiralty law, the maritime regulations of the municipal code; but there will be found, also, a great uniformity in their adoption of those principles and rules which constitute the general maritime law. Those which have been referred to, show the same difference in municipal regulation, and the same uniformity in general principles, which would appear on a more extended examination. A brief list of them is here given for the double purpose of showing the universality of maritime codification in commercial nations, and of directing the student to the numerous and cognate sources of the maritime law.

§ 108. European Codes. II.

Some of them are actual legislative enactments, others the ordinances of monarchs, and others are mere compilations, made up of extracts from well-known ancient codes and ordinances. Others, again, are mere essays and treatises on maritime subjects, which, in consequence of their practical wisdom, have, by long use and authority, come to be considered the highest evidence of marine law; and others are the voluntary regulations which persons interested in shipping have adopted for their own convenience; and which, in like manner, have ripened into law. They are to be found in the great work of Pardessus, in which he has collected the maritime laws of all commercial nations, and preceded each by a historical notice, valuable for the combined results of thorough historical and antiquarian re-

² Ord. de la Marine L. 1, tit. 2, arts. 1-11. In the third part of the “Us et Coutumes de la Mer,” Cleirac, in his learned and curious treatise, “La Jurisdiction de la Marine ou de l’Admirautie,” has extracted and collected the text of the royal ordinances of the Admiralty of France, from the earliest periods. Cleirac, 315.

search, careful and ingenious criticism, as well as liberal and generous views of the true end and proper extent of the maritime law.³

§ 109. The Maritime Law of the Rhodians. I.

[This is the most ancient code of maritime law. It was promulgated about nine hundred years before the Christian era, and about seventy years after the time of Solomon. These laws, being founded upon natural justice, entered largely into the maritime legislation of all the commercial nations of antiquity, of whose laws we have any knowledge. They were generally received in the Mediterranean, and Greece and Rome acknowledged their authority. In the time of Julius Cæsar and of Augustus, the distinguished jurisconsults, Ofilius, Labeo and Labinus, adopted them, especially in cases of jettison; and the Emperors Claudius, Vespasian, Trajan, Adrian, and Antoninus confirmed those laws, and directed that all cases of maritime commerce should be decided according to them.⁴]

§ 110. The Rhodian Law. II.

The above section, published in the first edition of this work, with the authorities referred to in support of it, remained unchanged in the second and third editions. But an examination of those authorities and many others seems to show that the authorities do not sustain the statement of the section, but that its averments are largely based on a document put forth at some time in the Middle Ages, to which Rhodian authority was attached by some unknown fabricator.

The only statement which, in our view, can be made on sufficient authority about the Rhodian law is that there was a Rhodian law of which *one sentence* is extant, but whether that sentence was a fragment of a Code enacted by legislative authority, or a rule of law established by judicial decision, or a usage of commerce which became law, cannot be certainly known,—nor can its date. A full setting forth of the authorities on which our conclusion is based would take up too much room. A brief summary of them is as follows:

The maritime power of the Rhodians was prominent during the three or four centuries preceding the Christian era, and it is fair to assume that any Rhodian law would by that time have assumed

³ Pardessus, *Lois Maritimes*, *passim*.

⁴ *Encyc. de Jurisp.*, Art. Rhodien; 1 Boulay Paty, tit. Prel. §§ 1-6; 2 Brown, *Civ. and Ad. Law*, 38; 3 Kent's *Com.* 1-21; *Robertson v. Baldwin*, 165 U. S. 275, at pp. 283, 293.

permanent shape. But very few mentions of Rhodian law are found in classical writers. Strabo says that the Rhodians had an admirable system of law, and he mentions one law of Rhodes punishing with death any one who was found inspecting the dockyards. Cicero, also, in his oration on the Manilian Law, praises the "naval discipline and glory" of the Rhodians, and in his work on Oratorical Invention, he speaks of a Rhodian law confiscating any vessel armed for fighting which came into any Rhodian port. No other mention of a Rhodian law by any classical writer appears to have been noticed. The earliest mention of any law of the Rhodians relating to maritime matters appears in the Sentences of Paulus, a Roman lawyer of the 3rd century A. D. He wrote five books of Sentences, which are still extant. And in his second book there is a division headed "On the Rhodian Law." There are five articles in this division. The first of them is this:

"If for the sake of lightening a ship, a jettison of goods has been made, what has been given for all shall be made up by the contribution of all."

§ 111. The Rhodian Law, III.

When the Digests came to be drawn up (they were put forth by Justinian's authority, about A. D. 533), there was placed in the Fourteenth Book one title headed "*De lege Rhodia de jactu*"—"Of the Rhodian law of jettison." The authors of the Digest, who had stated in their preface that they had prefixed to every law of the digests the name of its author, prefixed to each of the ten Articles in that Fourteenth Book the name of a Roman jurisconsult. The first article, to which is prefixed the name of Paulus, is in the words quoted above from the Sentences of Paulus, with the preliminary words "By the Rhodian law it is provided." Furthermore, the third section of the Second Article of the Fourteenth Book of the Digests (which is stated to have been taken from a work by Paulus on The Edict) reads "if any ship is ransomed from pirates, Servius, Ofilius, Labeo say that all should contribute." These three were great Roman jurisconsults, who lived not far from the Christian era. Hence we are fairly justified in saying that at the time of the Christian era the principle of contribution had become a part of the Roman Law so as to be discussed and applied by Roman lawyers; and that about two hundred years afterward the rule was mentioned by Paulus as having been derived from Rhodian law, and three hundred years

later was stated by the authors of the Digests to be a provision of the Rhodian law.

There is another reference to the Rhodian Law in the Digests. In the same Title of the Fourteenth Book of the Digests is an article relating the following anecdote:

“The petition of Eudaemon of Nicomedia to the Emperor Antoninus. ‘Lord and Emperor Antoninus. Making shipwreck in Italy, we have been plundered by taxgatherers inhabiting the islands of the Cyclades.’ Antoninus answers Eudaemon, ‘I indeed am lord of the land, but the law lord of the sea. Let it be judged by the Rhodian law prescribed concerning nautical matters, so far as none of our laws is opposed.’ The same thing has the Divine Augustus decided.”

The authority given in the Digests for this story is Volusius Moecianus, of whom Pardessus says that he was a lawyer who appears to have lived in the time of Trajan. If he was the author of this story, he must have lived in or after the reign of the Antonines. The reign of Trajan was from A. D. 98 to A. D. 117, and the Antonines reigned from A. D. 138 to A. D. 180. It would seem that Eudaemon, having been wrecked in Italia, had got as far as the Cyclades on his way to his home. Pardessus says that there is foundation for the opinion that, among the Greeks, shipwrecked property became the property of the Government. For some reason, probably under that rule, the tax-gatherers of the Cyclades seem to have seized the goods which Eudaemon had saved from his shipwreck in Italy and Eudaemon petitioned the Emperor for relief. And the Emperor answered that the question of this forfeiture should be determined by the Rhodian law of nautical matters, if there were no Roman law opposed.

This reply of the Emperor gives no information as to the Rhodian law, except that there was such a law concerning nautical matters, and possibly a Roman law also. And if, as one old author says, Rhodes and the Cyclades were included in one political district, and the Prefect of Rhodes was Prefect of the Cyclades, we can see why the Emperor might have said that he would not interfere, but that Eudaemon's case should be determined by the Rhodian law, if there was no Roman law opposed.

§ 112. The Rhodian Law. IV.

The only conclusion, therefore, which can be fairly drawn from the Digests as to the Rhodian law of the sea are two:

First, that there was in the time of Antoninus such a law, which

and in accepting the judgment of Bynkershoek that this alleged Rhodian law is a fabrication of some "hungry little Greek or other."⁶

Aside from the Prologue, the provisions of this so-called Rhodian Law show that they could not have had a Rhodian origin. One provision contains twice the words that "according to Rhodian law" a rule is as stated. No Rhodian law would contain such language. Another provision requires that in certain cases the shipmaster and his crew "shall take an oath *on the Gospels*." And two of the eight provisions entirely throw overboard that ground of contribution which is the especial element of the Rhodian law of jettison. They provide for contribution in cases where there has been no giving up for the common benefit, as, for instance, where passengers have lost their money.

A production cannot be called Rhodian law which declares the law to be contrary to what has been recognized during the whole Christian era as the distinctive Rhodian principle of contribution in case of jettison, and which presents as its authority a Prologue so manifestly unreliable.

The statement with which we began, as to the sole knowledge that is as yet attainable of Rhodian law, seems to us to be well founded. It seems improbable that any future labors of archaeologists will furnish further knowledge upon the matter.⁶

§ 115. The Maritime Laws of the Kingdom of Jerusalem.

These laws date back to the existence of the Christian Kingdom of Jerusalem, established after the capture of the Holy City by Godfrey de Bouillon, in the first Crusade.⁷

§ 116. The Laws of Oleron.

The laws of Oleron, heretofore spoken of in § 49, take their name from the Island of Oleron. The English and French have long disputed the honor of having produced these laws, and their real origin is undoubtedly obscured by a remote antiquity; but, by common con-

⁶ It is curious to note that Pardessus has shown that there was a similar falsification put forth to give authority to the Consulate de la Mer, *Pard. Lois Mar.*, Vol. 2, ch. 12, p. 4 *et seq.*

⁷ A work entitled "The Rhodian Sea Law" by Walter Ashburner, M. A., of Lincoln's Inn, Barrister at Law and Late Fellow of Merton College, Oxford, has recently been published, in which the writer with great erudition has discussed the work of which the above is written. He gives it no Rhodian authority. In his text he only calls it, "The Sea Law." The Prologue he speaks of as mendacious—The second Prologue he calls rigmarole. He says that the work in its present shape must date from between A. D. 600 and A. D. 800; that it was probably put together by a private hand, and that it is clear that Part III in the form in which we possess it has nothing to do with the Rhodians. The book is a high authority in agreement with the position of our text. The Rhodian Sea Law, by Walter Ashburner, Clarendon Press, Oxford, 1909. See also, Report of the Buffalo Conference of the International Law Association of 1899: Yale Law Journal of February, 1909. ⁷ Pard. 275.

sent, they are admitted to be the foundation of all the European maritime codes. The earliest French edition to which Pardessus refers, published in 1485, bears for a title, "*Jugemens de la Mèr des Maistres, des Mariniers, des Marchants, et de tout leur estre,*" a literal translation of which is the title of the earliest English edition, published in the reign of Henry VIII.—"Judgments of the Sea, of Masters, of Mariners, and Merchants, and all their doings."⁸

§ 117. *Les Jugemens de Damme ou Lois de Westcapelle.*

These are mainly a translation of the Laws of Oleron, made for Dam, a city of Austrian Flanders, situated a short distance from the sea, near to Bruges.⁹

§ 118. *Laws of Wisbuy or Wisby.*

Wisbuy, in the island of Gothland, was the great maritime and commercial entrepot of the north of Europe, more than five hundred years ago, and her maritime code was then known as "*Dat hogeste und dat oldeste water rechte van Wisby.*" "*The ancient and supreme water law of Wisby.*"¹⁰

§ 119. *Le Consulat de la Mer—Il Consolato del Mare—The Consulate of the Sea.*

Grotius says that the Consulate was made up of various enactments of the Greek Emperors of Germany, of the kingdoms of France, of Spain, of Syria, of Cyprus, of Majorca, and of the republics of Venice and Genoa. Later research has made it quite certain that it is of Catalan origin. It was first printed at Barcelona in 1494, and has been translated into all languages. In a sort of prologue it sets forth its contents: "These are the good constitutions and the good customs which regard matters of the sea, which wise men who travelled over the world communicated to our predecessors, who composed therewith books of the science of good customs. In what follows we shall find laid down the duties which the owner of a ship (*senyor de nau*) owes to the merchants and to the mariners and to the passengers, and to the other persons who are on board the ship, and likewise the duties which the merchant and the mariner and the passenger also owe to the ship owner."

⁸ Prynne, 107; Sea Laws, 116, 120; Cleirac, 1, 7; Malynes; Pet. Ad. Dec. Append.; 1 Pardessus Lois Mar. 283, 323; Brown Civ. and Ad. Law, 39; Miede, Anc. Sea Laws; 1 Boucher Consulat, chap. 18 to 27.

⁹ 1 Pard. Lois Mar. 371.

¹⁰ 2 Brown Civ. and Ad. Law, 39; 1 Pard. Lois Mar. 424, 463; Sea Laws, 174; Cleirac, 136, 139, 463, 524; Malynes; Pet. Ad. Dec. Append.; Miede, Anc. Sea Laws; 1 Boucher Cons. chap. 21 to 27.

§ 120. Le Guidon de la Mer.

This is an ancient treatise entitled "*Le Guidon pour ceux que font marchandize et qui mettent à la Mer*;" written in French for the use of the merchants of Rouen. It is devoted mainly to the law of maritime insurance, but Cleirac declares that it is written with such consummate ability that, in explaining the contract of insurance, the author has completely elucidated the whole subject of maritime contracts and naval commerce. It is a work of the highest authority.¹¹

§ 121. The Laws of the Hanse Towns.

In the year 1254, Lubec, Brunswick, Dantzic, and Cologne, in Germany, and, subsequently, Bruges in Flanders, London in England, and Novgorod in Russia, and the principal cities of the Rhine and other portions of Europe, constituted a sort of maritime confederacy, for the protection and promotion of their commercial interests; and, for that purpose, about the year 1597, formed a code of maritime law of the greatest respectability, embracing in its brief articles, much of what had before existed in the separate codes of the Hanseatic and other cities, and of the nations of Europe.¹²

§ 122. Other Codes.

The other maritime ordinances and codes which had existed before that time, were numerous, and are here briefly enumerated, in the order in which maritime legislation or codification was commenced in each nation or city.

- A. D. 940. The Maritime Law of Norway. 3 Pard. 1, 21.
- " 1063. Maritime Law of the Two Sicilies. 5 Pard. 214, 237.
- " 1117. Maritime Law of Iceland. 3 Pard. 45, 55.
- " 1150. Maritime Law of Denmark. 3 Pard. 205, 229.
- " 1158. Maritime Law of Lubec. 3 Pard. 391, 399.
- " 1160. Maritime Law of Pisa and Florence. 4 Pard. 545, 569.
- " 1224. Maritime Law of the Prussian States. 3 Pard. 447, 459.
- A. D. 1232. Maritime Law of Venice and Austria. 5 Pard. 1.
- " 1243. Maritime Law of Catalonia, Aragon, Valencia, and Majorca. 5 Pard. 321, 333.

¹¹ 2 Pard. Lois Mar. 369, 377; Cleirac, 181; 2 Brown Civ. and Ad. Law, 41.

¹² This code may be found in 3 Pard. 431, 455; Miede's Anc. Sea Laws; Brown Civ. and Ad. Law, 39; 3 Kent's Com. 1-21; Cleirac, 157, 166; Pet. Ad. Dec. Append.; Sea Laws, 190, 195.

- " 1254. Maritime Law of Sweden. 3 Pard. 89, 111.
- " 1270. Maritime Law of Hamburgh. 3 Pard. 329, 337.
- " 1270. Maritime Law of Russia. 3 Pard. 489, 505.
- " 1303. Maritime Law of Bremen. 3 Pard. 309, 317.
- " " Maritime Law of the Papal States. 5 Pard. 99, 113.
- " 1316. Maritime Law of Genoa. 5 Pard. 419, 439.
- " " Maritime Law of Sardinia. 5 Pard. 267, 281.
- " 1450. Maritime Law or Customs of Amsterdam, Enchuysen and Stavern. They were entitled, "*Ordonnances que les patrons et les negocians observent entre eux sur le droit maritime.*" I Pard. 393.

CHAPTER XII.

“ADMIRALTY” AND “MARITIME.”

§ 123. Our Constitution gave the Broadest Grant of Jurisdiction.

In the foregoing brief review of the admiralty and maritime jurisdiction of the different portions of the British Empire, of the original states of our union, and of the nations of continental Europe, it has been shown that admiralty and maritime cases consist of numerous classes of cases, everywhere distinctly characterized by their relation to ships and shipping; that of these numerous and various cases, the English Admiralty Court, at the time of the American Revolution, entertained jurisdiction of but very few, the Admiralty Courts of Scotland still more, the British Colonial Courts of Vice-Admiralty still more, the early English Admiralty still more, the French Admiralty Courts, and those of other continental nations, still more; that the extent and the character of these various jurisdictions were plainly set forth in legal works, which were well known evidences of the law, when our constitution gave to the Federal Government jurisdiction of “all cases of admiralty and maritime jurisdiction.” With these various jurisdictions to choose from, if any one of them was to be adopted, it is hardly rational to suppose that that one would not have been specified, or in some manner indicated. If no intention, as to the extent and jurisdiction, had been indicated, it would be evident that the matter was to be left to Congress; but it was important, in a national point of view, that all uncertainty should be removed, and the broadest grant was, therefore, made, of *all* cases.

§ 124. Meaning of “Admiralty” and of “Maritime.”

It has been stated in another place, that the English language is the only link that connects the laws and institutions of the United States with those of Great Britain; and that to the English law, and to English dictionaries we must resort for the meaning of the words used in the constitution. If we bring the admiralty and maritime grant in the constitution to this test, we shall find that the words *admiralty* and *maritime* then had, as they now have, a well established signification, entirely in harmony with their use by the great civilians

who made the admiralty and maritime jurisdiction the study of their lives.

ADMIRALTY.—That branch of law which deals with all maritime affairs, civil as well as criminal. **MARITIME.**—Relating to the sea; marine. Johnson's Dict. edit. 1755; Barclay's Dict.; Webster's Dict.; Falconer's Maritime Dict.; Cowell's Interpreter; Cunningham's Law Dict.; Bell's Law Dict.; Bouvier's Law Dict.; The Century Dict.; Murray's New English Dict.

§ 125. Admiralty and Maritime. II.

It will be seen, also, that the words *admiralty* and *maritime* are of constant occurrence in the works of the jurists of Holland and Spain, as well as those of England, Scotland, and France; and that those words have thus acquired an established signification, of which the framers of the constitution cannot be supposed to have been ignorant. Nor can they be presumed to have used them in any narrower sense than that in which they have been used for centuries by the whole commercial world. On general principles, it cannot be presumed that they were used in any local or merely municipal sense.

§ 126. Admiralty and Maritime. III.

If we examine the etymology, or received use of the words *admiralty* and *maritime* jurisdiction, we shall find that they include the judicial jurisdiction of the admiral, and of all maritime causes, or causes arising from things done upon and relating to the sea; or, in other words, all transactions and proceedings relative to commerce and navigation, and to damages or injuries upon the sea, or navigable waters of the nation, or upon the high sea. In the maritime codes, and the commentaries upon them, as well as in the writings of the greatest jurists, in all the great maritime nations of Europe, the term *admiralty* jurisdiction is uniformly applied to the jurisdiction over maritime contracts and concerns of the courts administering the general maritime law. The judges of the common law courts in England, in a spirit which has been alluded to, used it in a narrower sense; but the distinguished men who practised and presided in the admiralty, and who made such subjects their peculiar study, always gave to those words their wider and more appropriate signification; and there was no superior sanctity in the decisions at common law, upon the subject of the jurisdiction of those courts, which should entitle them to outweigh the very able and learned decisions of the great civilians of the admiralty.

CHAPTER XIII.

THE FEDERAL AND THE STATE JURISDICTION.

§ 127. Concurrent Jurisdiction of Federal and State Courts.

The Constitution of the United States provides that the judicial power of the United States shall extend to "all cases of admiralty and maritime jurisdiction." This does not mean that every case touching a ship or her affairs must necessarily be heard by a Federal Court. The common law court always had jurisdiction of a cause of action against a ship owner on his contracts or torts, when he could be reached personally, and money damages only were demanded; and that right was not taken away by the grant in the Constitution; but the right also to hear such cases with other cases of admiralty jurisdiction was given to the newly constituted Federal judiciary. The jurisdiction of the two courts is therefore concurrent to a certain extent.

Story, in his Commentaries on the Constitution, says as follows as to the grant of admiralty jurisdiction:

"The reasonable interpretation would seem to be that it conferred on the national judiciary the admiralty and maritime jurisdiction, exactly according to the nature and extent and modifications in which it existed in the jurisprudence of the common law. When the jurisdiction was exclusive, it remained so; when it was concurrent, it remained so. Hence the states could have no right to create courts of admiralty as such, or to confer on their own courts the cognizance of such cases as were exclusively cognizable in admiralty courts. But the states might well retain and exercise the jurisdiction in cases of which the cognizance was formerly concurrent in the courts of common law. The latter class of cases can be no more deemed cases of admiralty and maritime jurisdiction than cases of common law."¹

§ 128. Concurrent Jurisdiction of Federal and State Courts. II.

The Judiciary Act, which established the United States Courts and defined their jurisdiction, confirmed the existing right of the common law courts, by providing that the Federal District Courts shall have

¹ 3 Story Com. Const. § 1666, note.

exclusive jurisdiction of "all cases of admiralty and maritime jurisdiction, saving to suitors in all cases the right of a common law remedy where the common law is competent to give it."² The common law remedy here mentioned is the right of a plaintiff to proceed *in personam* against a defendant,³ which remedy the common law is competent to give. Therefore, when a direct suit against a ship owner is brought, e. g. to recover seamen's wages, or damages for collision, and jurisdiction of the person of the defendant can be secured, such a suit may be brought either in admiralty or at common law, the two courts having in this respect concurrent jurisdiction. But the right to proceed *in rem* is distinctly an admiralty remedy, and hence exclusively within the control of the United States courts: no state can confer jurisdiction upon its courts to proceed *in rem*.⁴ Nor could Congress give such power to a state, since it would be contrary to the Federal grant in the Constitution. So liens given by the laws of a State for matters which are subjects of admiralty jurisdiction are enforceable against the thing only in the Federal Courts; though the debt on which the lien is founded may be sued on *in personam* in the State Court.⁵ This right to proceed *in rem*, according to the methods of the maritime law, is the "exclusive" jurisdiction of all civil causes of admiralty and maritime jurisdiction conferred upon the District Courts by Section 563 of the Revised Statutes, subdivision eight.

§ 129. Concurrent Jurisdiction of Federal and State Courts. III.

Therefore, a suitor who has a claim of seamen's wages,⁶ or for breach of charter or other similar demand, may sue thereon in admiralty, or in a common law court. The case is nothing but contract, and the common law court is competent to give the remedy. A common law court may entertain an action of collision against the shipowner as a common law action of tort;⁷ though it is not competent

² Rev. Stat. § 563, sec. 8.

³ Taylor v. Caryl, 20 How. 583; The Moses Taylor, 4 Wall. 411; The Hine v. Trevor, 4 Wall. 555; The Belfast, 7 Wall. 624; Leon v. Galceran, 11 Wall. 185; Steamboat Co. v. Chase, 16 Wall. 522; Schoonmacher v. Gilmore, 102 U. S. 118; Chappell v. Bradshaw, 128 U. S. 132.

⁴ The Moses Taylor, 4 Wall. 411; The Belfast, 7 Wall. 624; The Glide, 167 U. S. 606; U. S. v. Burlington etc. Ferry Co., 21 F. R. 331.

⁵ See Material Men, §§ 196-198.

⁶ Leon v. Galceran, 11 Wall. 185.

⁷ Steamboat Co. v. Chase, 16 Wall. 522; Schoonmacher v. Gilmore, 102 U. S. 118; Belden v. Chase, 150 U. S. 674. In a common law action of collision, involving the collision rules, which are promulgated by the Federal Government, the Supreme Court has the right to review the judgment of the highest court of a State. Belden v. Chase, 150 U. S. 674.

to give the peculiar remedy of a division of the damages, which an admiralty court may give.⁸ A common law court may entertain a contract suit for salvage, and even a suit for salvage not on formal contract, basing its jurisdiction on an implied contract, but in such cases it can give as damages, compensation for work, labor and services only, and it is not competent to take into account the elements of peril, hardship and bravery which are considered and rewarded by an admiralty court in a salvage case.⁹ And the peculiar remedy afforded by the limitation of liability law, where there is a multiplicity of claims, and the proceeding is both *in personam* and *in rem*, the common law is wholly incompetent to give.¹⁰

§ 130. Exclusive Jurisdiction of State Courts.

On the other hand the States may deal with boats and vessels, and may enforce liens given by state statutes against them, provided the subject matter is not maritime in its nature, and hence not within the peculiar jurisdiction of the admiralty. Thus liens given by state statutes for the building of a vessel may be enforced in the State Courts and only there, because contracts for building vessels have been held by the Supreme Court to be not in their character maritime.¹¹ In *Johnson vs. Chicago &c. Elevator Co.*¹² it was held that the state law governed a case of the damage to a building on land by a schooner's jib boom, because the *locus* of the tort forbade its recognition as a maritime tort. In *Knapp, &c. Co. vs. McCaffrey*¹³ it was held that a bill in equity to foreclose a common law possessory lien upon a raft for towage was within the jurisdiction of the State Court, the law of the State giving a right to proceed in equity in such a case, and the proceeding being nothing more than a suit *in personam* to enforce a common law remedy, with incidental attachment of the *res*. In the latter case, the Supreme Court drew the following distinction between such proceedings as are and such as are not invasions of the exclusive admiralty jurisdiction: "If the cause of action be one cognizable in the admiralty, *and* the suit be *in rem* against the thing itself, though a monition be also issued to the owner, the proceeding is essentially

⁸ *Belden v. Chase*, 150 U. S. 674.

⁹ *Merritt etc. Co. v. Tice*, 77 App. Div. (N. Y.) 326; 118 App. Div. 123.

¹⁰ *Norwich Co. v. Wright*, 13 Wall. 104, 123.

¹¹ *Edwards v. Elliott*, 21 Wall. 532; *The Winnebago*, 205 U. S. 354; *The John H. Ketcham* 2d, 97 F. R. 872.

¹² *Johnson v. Chicago etc. El. Co.*, 119 U. S. 388; see *The Plymouth*, 3 Wall. 20; *Ex parte Phoenix Ins. Co.*, 118 U. S. 610.

¹³ *Knapp, etc., Co. v. McCaffrey*, 177 U. S. 638.

one in admiralty. If, upon the other hand, the cause of action be not one of which a court of admiralty has jurisdiction, *or* if the suit be *in personam* against an individual defendant, with an auxiliary attachment against a particular thing, or against the property of the defendant in general, it is essentially a proceeding according to the course of the common law, and within the saving clause of the statute (Sec. 563) of a common law remedy."

§ 131. The Maritime Lien.

Whenever a debt is by law, no matter what law, or by contract, a lien on the vessel, then the vessel may be proceeded against *in rem*. The liens arising under a State statute rank with the true maritime liens, which exist and have always existed, apart from contract, not by virtue of statute, but by implication of the maritime law, based on the necessities of commerce and the peculiar relations of things pertaining to the sea.

The maritime lien is an appropriation of the ship as a security for a debt or claim, such appropriation being made by the law: the law creates a remedy for the claim against the ship herself and vests in the creditor a special property in her, which subsists from the moment the debt arises, and follows the ship into the hands of an innocent purchaser. Pothier describes an hypothecation to be "the right which a creditor has in a thing of another, which right consists in the power to cause that thing to be sold, in order to have the debt paid out of the price. This is a right to the thing, a *jus in re*;¹⁴ and this definition of an hypothecation accurately describes a maritime lien. The maritime law has always held that, in contracts with a ship, the ship herself is bound to the performance thereof, so that the other contracting party has a lien on the ship herself for breach of the contract. And in cases of maritime tort, the same law considers that the wrong gives to the person who has suffered thereby a right to look to the ship for his remedy, gives to him a proprietary interest in her as security for his redress, and hence gives to him what is called a maritime lien upon the ship.

The same principle is incorporated into all the codes of maritime law, and is a well settled rule of the general maritime law, and, as such, was acted on by the English admiralty for centuries, till it was overthrown in the time of Charles II by the courts of common law, which acknowledge no such privilege or lien, and only recognize the

¹⁴ Pothier, *Traite de l'Hypothèque*, art. prelim.

common law lien of the mechanic, who, by virtue of his possession, and not otherwise, is allowed a lien.¹⁵

§ 132. The Maritime Lien. II.

A ship is, of necessity, a wanderer. She visits places where her owners are not known, or are inaccessible. The master is not usually of sufficient pecuniary ability to respond to the demands of the voyage, and he is the fully authorized agent of the owners. These and other kindred characteristics of maritime commerce have established the necessity of making the ship herself security, in many cases, to those who have demands against the master or owners.¹⁶ The contracts and the torts of the master and owners give, therefore, in numerous cases, a lien upon the vessel herself. All these are maritime liens, whether created by actual hypothecation, by implication, or by operation of law.¹⁷

Whenever there is a maritime lien, it may be enforced in the admiralty.¹⁸ Maritime liens differ from common law liens in a very important point. A common law lien is always connected with a possession of the thing; it is simply a right to retain. On the other hand, a maritime lien does not in any manner depend upon possession. It is a right affecting the thing and giving a sort of proprietary interest in it, and a right to proceed against it, to recover that interest.¹⁹ Wherever there is a maritime lien upon property, it adheres to the proceeds of that property, into whose hands soever they may go, and those proceeds may be attached in the admiralty.²⁰ And a State court may not restrain proceedings to enforce such lien.²¹ This lien upon proceeds extends to the proceeds of a judicial sale in the registry of the court, it being a general rule, that before the proceeds are distributed, the court, on proper proceedings for that purpose, will

¹⁵ See *The Two Marys*, 10 F. R. 919.

¹⁶ *The U. S. v. The Malek Adhel*, 43 U. S. (2 How.) 236.

¹⁷ Coote's Prac. 3.

¹⁸ *Drinkwater v. The Spartan, Ware*, 149; *The Havana, Sprague*, 402; *Davis v. Leslie, Abb. Ad.* 123.

¹⁹ Dig. 42, 5, 6; id. 134; *The Zodiac*, 1 Hag. Ad. 320, 325; *The Neptune*, 3 id. 136; *Edw. Ad. Juris.* 93-109; 1 *Rol. Ab.* 533; *Cro. Car.* 296; *Buxton v. Snee*, 1 *Ves. Sen.* 154; *Hoare v. Clement*, 2 *Show.* 338; *Abb. on Ship.* 143, 149, n.; *The Nestor*, 1 *Sum.* 73, 81; *The Marion*, 1 *Story*, 73; *The Druid*, 1 *W. Rob.* 398; *Harmer v. Bell*, 22 *Eng. Law & Eq.* 72.

²⁰ *The Rebecca, Ware*, 188; *The Phebe*, id. 263; *The Paragon*, id. 322; *Cutler v. Rae*, 48 U. S. (7 How.) 731; *Brackett v. The Hercules, Gilp.* 185; *Harmer v. Bell*, 22 *Eng. Law & Eq.* 72; Coote's Prac. 3-7; *Roccus*, 31, 32.

²¹ *Moran v. Sturges*, 154 U. S. 256; *The Willamette Valley*, 62 F. R. 293.

adjudicate upon the claims to such proceeds, arising from liens upon them.²² And claims against proceeds or remnants and surplus are allowed on liens other than maritime liens. See post §§ 505, 506.

§ 133. Jurisdiction Not Dependent upon Lien.

It was not uncommon in the earlier years of the consideration of the extent of the admiralty jurisdiction to find the claim asserted that the court had not jurisdiction in a particular maritime cause of action *in personam*, while jurisdiction over the same cause of action *in rem* would be admitted. And it has been asserted, that the admiralty courts have jurisdiction only *in rem*, or rarely *in personam*, and only as ancillary to the jurisdiction *in rem*. A reference to the books of precedents and cases, will show that in the earlier periods of admiralty practice, almost all the cases were *in personam*.²³ This was the usual course of admiralty proceedings, and it was not considered necessary to arrest the vessel, except in cases where the owners or master were absent, or where a mere question of privilege or preference was to be decided. But the distinction between proceedings *in rem* and *in personam* has no proper relation to the question of jurisdiction in admiralty. If mariners' wages, salvage, freight, and bottomry are maritime causes of action, then the court of admiralty has jurisdiction of them, and may use any of its appointed modes to give the party any remedy to which the law entitles him. The substratum of the action is the liability of one party to respond to another, and the court may enforce it against the person, or against a particular portion of his property, or against his property generally, as the law may have provided the right. If the claim, which is the cause of action, be, by law, a lien upon a vessel, her cargo, freight, the proceeds of the same, or the remnants and surplus thereof, the court may enforce that lien by a suit *in rem*, or may allow the lien to remain, and compel the party himself to pay the demand. In such cases, the question before the court is not whether the court have jurisdiction, but whether the party have right; it is not a question in abatement, but a question of the merits of the action. "If the cause is a maritime cause, subject to admiralty cognizance, jurisdiction is complete over the person, as well as over the ship. It must in its nature be complete, for it can-

²² *Brackett v. The Hercules*, Gilpin, 185; *Ex Parte Levis*, 2 Gal. 483; *Shepard v. Taylor*, 30 U. S. (5 Pet.) 675; *McLane v. U. S.*, 31 U. S. (6 Pet.) 404; *Mutual S. I. Co. v. Cargo of the George*, etc., Olc. 89.

²³ See *Selden Society Publications*, Vol. 6 for 1892, *Select Pleas in the Court of Admiralty*; London; Bernard Quaritch, 1894.

not be confined to one of the remedies on the contract, when the contract itself is within its cognizance.”²⁴

§ 134. Classification of Cases within the Judicial Power—Subject Matter.

The cases, brought by the constitution within the judicial power of the United States, are subject to two classifications; the first, as to the subject-matter of the jurisdiction, and the second, as to the mode of proceeding. Under the head of subject-matter they are of four general classes: 1st. Cases of every description in law and equity, arising under the constitution, laws and treaties of the United States, a jurisdiction necessary to enable the United States to execute and enforce its own laws. 2d. Cases of every description affecting ambassadors, other public ministers and consuls, a provision obviously necessary to enable the Government of the United States to regulate its intercourse with foreign nations, and to secure the dispensing of justice to the agents of that intercourse. 3d. Cases of admiralty and maritime jurisdiction, a provision necessary to enable the general government to administer that branch of the law known as the admiralty and maritime law, embracing the system of laws, which regulate the rights and duties of those engaged in maritime affairs, or doing business on navigable waters, which constitute the highways of nations. 4th. Controversies between citizens of different states, etc., a provision necessary to secure a due administration of justice, in cases in which national prejudices, state pride or state interest might influence the decision of the state tribunals. This classification relates entirely to the jurisdiction so far as it depends upon the subject-matter.

§ 135. Classification of Cases within the Judicial Power—Mode of Proceeding.

The other classification is entirely independent of the question of jurisdiction, and depends solely upon the mode of proceeding, and embraces three classes, viz., common law cases, equity cases, and admiralty and maritime cases. These classes include all judicial cases. By cases at common law are meant cases in which legal rights, duties, and offences are to be ascertained in courts of law. By cases

²⁴ The U. S. v. 350 Chests of Tea, 25 U. S. (12 Wheat.) 486; Dunlap Ad Prac. 69; Bains v. The James and Catharine, Bald. C. C. R. 544; Cutler v. Rae, 48 U. S. (7 How.) 729; New Jersey Steam Nav. Co. v. Merchants' Bank, 47 U. S. (6 How.) 392; Boyd's Proceedings, *passim*; Clerke's Praxis, *passim*; Hall's Adm. *passim*; Dupont v. Vance, 60 U. S. (19 How.) 171; Boutin v. Rudd, 82 F. R. 685; Wilson v. The Resolute, 168 U. S. 437.

in equity are meant cases in which equitable rights and duties are to be ascertained, in courts of equitable jurisdiction and proceeding; and by admiralty and maritime cases are meant cases in which maritime rights, duties and offences become the subject of judicial cognizance in courts of admiralty and maritime jurisdiction.²⁵

§ 136. Different Modes of Proceeding.

Each of these courts has its own system of legal principles, and its own practice, or mode of procedure; so that an action at law, a suit in equity, and a suit in admiralty, can hardly be said to resemble each other. It is not, however, to be understood, that the same substantial claim may not be a matter of controversy in courts of any class. A claim for mariners' wages may be prosecuted in a court of law, and it is then a case, or action at common law,²⁶ and it is to be settled according to the rules which govern the court in which it is prosecuted. The same demand may, also, by the necessity of a discovery, or of an injunction, or by the intervention of trustees, be brought within the range of equitable jurisdiction: it then becomes a suit in equity, and the rules of that course of procedure must be applied to it. Or the same claim may seek its more usual and appropriate forum, a court of admiralty; in which case, it is a cause in admiralty, and is to be disposed of according to the course of admiralty courts. The constitution nowhere provides what cases shall be within the one or the other class, nor what shall be the steps of proceeding. That is left to be settled by the courts, according to the established principles of judicial procedure, subject to the restrictions in the sixth and seventh amendments of the constitution, and to any appropriate action of Congress within its powers and in regard thereto.²⁷

§ 137. Trial by Jury.

"Depriving us, in many instances, of the benefit of trial by jury" was one of the grievances enumerated in the Declaration of Independence; and the trial by jury has always, to the American people, been an object of deep interest and solicitude, and every encroachment

²⁵ *Parsons v. Bedford*, 28 U. S. (3 Pet.) 446; *Waring v. Clarke*, 46 U. S. (5 How.) 460.

²⁶ *Leon v. Galceran*, 78 U. S. (11 Wall.) 185. So also with a claim for a collision; *Schoonmacher v. Gilmore*, 102 U. S. 118.

²⁷ *Parsons v. Bedford*, 28 U. S. (3 Pet.) 446; *Blad v. Bamfield*, 3 Swan. 605; *Rex v. Carew*, id. 670; *The King v. Carew*, 1 Vernon, 54; *Nicol v. Goodall*, 10 Ves. 155; *Parker v. Toulmin*, 1 Cox, Chan. Cases, 264; *Duncan v. M'Calmont*, 3 Beav. 409; *Anonymous*, 12 Mod. 16; *The Belfast*, 74 U. S. (7 Wall.) 643.

upon it has been watched with great jealousy. The right to it is secured by all the State constitutions, and the want of such an express security in the Constitution of the United States was one of the strongest objections taken against its adoption. To meet the public feeling on this subject, the sixth and seventh amendments to that instrument were adopted, the sixth amendment providing that in all criminal prosecutions the accused should enjoy the right to a speedy and impartial trial by jury of the State or District wherein the crime should have been committed, and the seventh amendment preserving the right of trial by jury in actions at common law when the value in controversy exceeds Twenty dollars. Neither of these provisions applied to admiralty cases, and the Judiciary Act, passed immediately after the adoption of the Constitution, in its provisions for the organization of the District Courts, provided that "the trial of issues of fact in the District Courts, in all cases, except civil cases of admiralty and maritime jurisdiction, shall be by jury."²⁸

Therefore, while the people had the subject before them, fresh from the discussions in relation to the Constitution itself, they confined the necessity for jury trials to crimes committed within the territorial limits of the United States, and to actions at common law, but left the jurisdiction of transactions so peculiar as those of the sea to be exercised only by judges schooled in the principles and mystery of such transactions, as had been done in all ages and nations before, and refused to leave them to the uncertainties of juries familiar only with the usages and necessities of the land. Congress wisely gave to the trial of maritime offenses a jury, but as wisely decided that in causes civil and maritime the Court should decide the facts as well as the law.

§ 138. Trial by Jury in Suits Arising on the Great Lakes.

It has been heretofore remarked that the influence of the English jurisdiction tended, in the early history of the country, to confine the admiralty jurisdiction to cases arising upon waters within the ebb and flow of the tide. It was soon perceived, however, that such a limitation could not be maintained in this country, and that the great inland seas and extensive and innumerable waterways of this country must be considered as within that jurisdiction, though in places a thousand miles from the ocean. In the year 1845 Congress passed an Act²⁹ by which it was intended to extend the admiralty

²⁸ Rev. Stat. § 566.

²⁹ 5 Stat. p. 727.

jurisdiction over the Great Lakes, and, apparently doubtful about applying such jurisdiction in all its details to waters so far inland, inserted in the act a clause as follows:

“Saving, however, to the parties the right of trial by jury of all facts put in issue in such suits, where either party shall require it.”

The Supreme Court, however, in the cases of *The Genesee Chief*³⁰ and other cases,³¹ held that the admiralty jurisdiction extended over such inland waters, by virtue of the reservation in the Constitution of jurisdiction over “all cases of admiralty and maritime jurisdiction”, and that the special Act extending the jurisdiction was unnecessary. And on the revision of the Statutes, the provisions of the Act of 1845 were omitted, except the provision for trial by jury, which was retained in a modified form and now forms part of § 566 of the Revised Statutes. The Admiralty Courts of the Districts bordering on the Lakes have not looked with favor upon the provision for trial by jury in admiralty, and have limited its application,³² or have held that the admiralty judge is still responsible for the judgment rendered, and that the verdict of the jury in such cases is to be regarded as merely advisory,³³ and as in the nature of the opinion of the Trinity Masters in the English Admiralty, sitting with and advising the Court, whose decision of the matter, however, is final. This view of the statute has not met with the approval of the Circuit Court of Appeals for the Second Circuit, which, in the case of *The Western States*,³⁴ held that the District Court is in such cases bound by the verdict of the jury, the power of the court, if it disagrees with such verdict, being restricted to the power of granting a new trial.

§ 139. Our Commerce Requires One System of Law.

With the above exception, which, as has been shown, crept into the Federal Law through the lack of appreciation by Congress of the extent of the jurisdiction given to the Federal judiciary by the Constitution, the authority of the Federal judges over all cases of admiralty and maritime jurisdiction is supreme and is everywhere the same.

³⁰ *The Genesee Chief*, 12 How. 443.

³¹ *The Hine v. Trevor*, 4 Wall. 455; *The Magnolia*, 20 How. 296; *The Eagle*, 8 Wall. 15.

³² *The Erie Belle*, 20 F. R. 63; *Bigley v. The Venture*, 21 F. R. 880.

³³ *The Empire*, 19 F. R. 558; *The City of Toledo*, 73 F. R. 220; See *The Western States*, 159 F. R. 354.

³⁴ *The Western States*, 159 F. R. 354.

The wisdom of our ancestors, in laying the foundations of the republic, is in nothing more evident than in our organic regulations in relation to commerce. For all commercial purposes we must be one people; no different rules must be applied to our maritime commerce in the ports of the different states; perfect freedom and equality of trade and navigation among ourselves is constitutionally secure. If it had not been so, long before this time we should have been divided, weak and antagonistic nations, the fragments of our original Union. How easy it is to perceive that our harmony might be interrupted, and our strength impaired, if each state might adopt and enforce, on its half of a river, its section of a lake, its short stretch of coast, in its own ports and harbors and local waters, to which all the states have a common right of use, a system of commercial and maritime law, repealing, or conflicting with that great system of commercial law which is known as the admiralty and maritime law, and which alone can secure those equal state rights which it was one great object of the constitution to protect.

CHAPTER XIV.

THE MARITIME LAW IN GENERAL—MARITIME CONTRACTS.

§ 140. The Maritime Law.

The maritime law, being, not the law of any particular country, but a law common to all nations which are engaged in maritime commerce, does not rest for its character or authority on the peculiar institutions and local customs of any particular country, but consists of certain principles of equity and usages of trade which general convenience and a common sense of justice have established in all the commercial countries of the world, to regulate the dealing and intercourse of merchants and mariners, in matters relating to the sea.¹

§ 141. Writers on Maritime Law.

The general maritime law is found, broadly and fully laid down and discussed, in the works of the celebrated and learned commentators upon the maritime codes, and of other elementary writers on maritime law, such as Selden, Grotius, Stracha, Bynkershoek, Valin, Stypmanus, Loccenius, Casa Regis, Emerigon, Kuricke, Pothier, Roccus, Malynes, Cleirac, Boucher, Boulay Paty, Pardessus, Vinnius, Lubeck, Targa, and many others, whose works have been the universally known and everywhere conceded evidence of the admiralty and maritime law.²

§ 142. They Considered the Nature of the Transaction.

It would swell this treatise far beyond its professed limits if an analysis or synopsis of those various codes and commentaries were attempted. It will be sufficient, here, to remark, that none of them adopt any narrow rule as to the extent of the admiralty jurisdiction. The question, whether the cause of action arose within the limits of a county, or in a harbor, or was founded on an instrument, sealed or unsealed, or made on shore or on shipboard, in a usual, or unusual form, appears never to have entered the minds of those legislators

¹ See § 4 and § 39; The *Rovena*, Ware, 313; 3 Kent's Com. 3d Ed. 1.

² 1 Boulay Paty, 96; 3 Kent's Com. 13th edit. 1-21.

and jurists. They have always looked solely to the maritime nature and character of the transactions, which cannot depend upon any such considerations, and they treat of all cases of service, contract, tort, or accident relating to ships, shipping and maritime commerce.³

§ 143. Maritime and Non-maritime Agreements.

While, however, the maritime law regulates and enforces all maritime contracts, it does not take cognizance of agreements not in themselves maritime, although they may be preliminary to maritime contracts, and have a direct reference to them, unless they have been confirmed and entered upon.⁴ Thus, a marine policy of insurance is a maritime contract; but an agreement to make a particular policy, has been held to be not a maritime contract;⁵ so that, if the agreement should be violated, and the policy should not be made, or, being made, should differ in important particulars from that agreed upon, the admiralty would not have jurisdiction of a suit for that violation, although it would entertain a suit on the policy actually made. Nor would it have jurisdiction to reform the policy,⁶ or to take cognizance of a mutual mistake.⁷ So, too, the chartering of a ship is a maritime service, and the charter party is a contract within the cognizance of the admiralty; but a mere undertaking to make a charter party, or to procure a person to make one, is not within the jurisdiction of the admiralty.⁸ It is not a maritime contract. It is not subject to the regulations of the maritime law. The only occasion on which a court of admiralty will take jurisdiction of a non-maritime contract is where such contract is incidental to a maritime contract:—if a contract is maritime in itself it carries all its incidentals with it, and the latter, though non-maritime in themselves, will be heard and decided.⁹ But where the principal subject matter of a contract belongs to the jurisdiction of a court of common law or of equity, the whole contract belongs there, and admiralty will not take jurisdiction, even though incidental matters connected with the contract

³ Pard. Lois Mar. 451.

⁴ The Alvah, 59 F. R. 630.

⁵ Marquandt v. French, 53 F. R. 603; The City of Clarksville, 94 F. R. 201.

⁶ Williams v. Ins. Co., 56 F. R. 159.

⁷ Meyer v. Pac. Mail S. S. Co., 58 F. R. 923.

⁸ Torices v. The Winged Racer, 39 Hunt's Merch. Mag, 458, Fed. Cas. 14102; *contra*, The Pacific, 1 Blatchf. 569.

⁹ Rosenthal v. The Louisiana, 37 F. R. 264; The Pulaski, 33 F. R. 383; Evans & N. Y. v. P. S. S. Co., 145 F. R. 841; Keyser v. Blue Star S. Co., 91 F. R. 267; Nash v. Bohlen, 167 F. R. 427.

might in themselves be cognizable in the admiralty.¹⁰ The distinction in many cases will, undoubtedly, seem shadowy; still, in a large class of cases, it will be readily perceived, and its importance fully appreciated.¹¹ See *post* § 188 and § 261.

§ 144. Executory Contracts.

A suit for breach of an executory contract may be maintained *in personam* in admiralty,¹² but breach of such a contract gives no lien upon the ship.¹³

§ 145. What is a Maritime Contract.

It is not always easy to determine what is a maritime contract. The dividing line between causes maritime and non maritime, is not always strongly marked. It is believed that a sure guide, in matters of contract, is to be found in the relation which the cause of action has to a ship, the great agent of maritime enterprise, and to the sea as a highway of commerce. Where there is navigable water, and ships and vessels, these are the subjects of the maritime law. If a contract relate to a ship, or to commerce on navigable waters, then it is subject to the maritime law, and is a case of admiralty and maritime jurisdiction, whether the contract is to be performed on land or water.¹⁴ The languages of those nations in which the admiralty and maritime jurisdiction has been longest acknowledged, and where the system of law which regulates maritime commerce has been most studied, furnish a brief illustration of the proper compass of the

¹⁰The *Pennsylvania*, 154 F. R. 9; *The James T. Furber*, 157 F. R. 126.

¹¹*De Lovio v. Boit*, 2 Gall. 468; *Andrews v. Essex Fire & Marine Ins. Co.*, 3 Mason, 16; *Dean v. Bates*, 2 Woodb. & M. 87; *Dunlap's Prac.* 43; *Plummer v. Webb*, 4 Mason, 380; *vide* *The Tribune*, 3 Sumn. 144; *Cox v. Murray*, Abb. Ad. 340; *The Harvey and Henry*, 86 F. R. 656; *The Humboldt*, 86 F. R. 351.

¹²*The J. F. Warner*, 22 F. R. 342; *Boutin v. Rudd*, 82 F. R. 685; *The Monte A.*, 12 F. R. 331.

¹³*Vandewater v. Mills*, 19 How. 82; *The Schooner Gen. Sheridan*, 2 Ben. 294; *The Pauline*, 1 Biss. 390; *The William Fletcher*, 8 Ben. 537; *Scott v. The Ira Chaffee*, 2 F. R. 401; *The Prinz Leopold*, 9 F. R. 333; *The City of Baton Rouge*, 19 F. R. 461; *The Priscilla*, 114 F. R. 836; *The Francesco*, 116 F. R. 83; *Bennett v. The Guiding Star*, 53 F. R. 936; *Anchutz v. The Seven Sons*, 69 F. R. 271; *The Eugene*, 83 F. R. 222, *affd.* 87 F. R. 1001; *The Bella*, 91 F. R. 540; *The Habil*, 100 F. R. 120; *The Ripon City*, 102 F. R. 176; *The S. L. Watson*, 118 F. R. 945; *Guffey v. Alaska & P. S. S. Co.*, 130 F. R. 271; *The Margaretha*, 167 F. R. 794.

¹⁴*Ins. Co. v. Dunham*, 11 Wall. 1; *Wortman v. Griffith*, 3 Blatch. 528; *The Fifeshire*, 11 F. R. 743; *The Vidal Sala*, 12 F. R. 207; *The Scotia*, 35 F. R. 916; *The Ella*, 48 F. R. 569; *Dailey v. City of New York*, 128 F. R. 796; *The Oregon v. Pittsburgh etc.*, 55 F. R. 666; *The San Fernando v. Jackson*, 12 F. R. 341; *Lands v. A Cargo, etc.*, 4 F. R. 478.

maritime law, in the significant descriptive names, which they give to it in the vernacular tongue. *Sea Laws—Maritime Law—Law of Ships and Shipping—Laws of Naval Trade and Commerce—Droit Maritime—Water Rechte—Scip Rechte—Scip Rechts—Skip Roet—Zee Rechten—Gius Nautico—Leggi Maritimi—Jus Maritimum.*¹⁵ Much of which is briefly expressed in the title of the “Consulat de la Mer, or agreements, statutes and good ordinances which the ancients established for the cases of merchants and mariners and masters of vessels.”¹⁶

We find no allusion to tides, as affecting the law; no exceptions of ports or harbors, or narrow seas, or bodies of counties; or contracts in unusual form, or sealed, or unsealed, with or without a penalty, made on land or on shipboard. The only question is whether the transaction relates to ships and vessels, masters and mariners, as the agents of commerce, on great navigable waters. “*Toutes affaires relatives à la navigation et aux navigateurs appartient au droit maritime.*”¹⁷

§ 146. Language of Documents.

At the hazard of unnecessary repetition, there is here brought together evidence, consisting of extracts from documents which have been already referred to, which will show the uniformity or similarity of language that has been used on this subject, in different ages and countries.

“To hold conusance of pleas, debts, bills of exchange, policies of assurance, accounts, charter parties, contractions, bills of lading, and all other contracts, which may anyways concern moneys due for freight of ships, hired and let to hire, moneys lent to be paid beyond the seas, at the hazard of the lender, and also of any cause, business, or injury whatsoever, had, or done in, or upon, or through the seas, or public rivers, or fresh water streams, havens, and places subject to overflowing whatsoever within the ebbing and flowing of the sea.”
—*Admiral's Commission, A. D. 1553 et seq.*

“Also, touching all and singular other matters which concern

¹⁵ *Mare*.—The sea; sometimes a great river. *Maritimus*.—Of or belonging to the sea. *Nauta*.—A sailor. *Nauticus*.—Belonging to ships or mariners. *Navis*.—A ship or bark; any vessel of the sea or river. *Navalis*.—Belonging to ships.—AINSWORTH.

¹⁶ 5 Pard. 11; *ante*, § 119; *vide* Vandewater v. Mills, 60 U. S. (19 How.) 82; Ward v. Thompson, 63 U. S. (22 How.) 330; Waterbury v. Myrick, Blatchf. & H. 34; Plummer v. Webb, 4 Mason, 380; Alberti v. The Virginia, 2 Paine, 115; Thackarey v. The Farmer, Gilp. 524; The Canton, Sprague, 437.

¹⁷ Quoted from the author of a history of the Law of Culm, one of the Prussian States, in 3 Pard. Lois Mar. 451; 1 Boulay Paty, 99.

merchants, owners, and proprietors of ships, masters, shipmen, mariners, and shipwrights.”—*Same*, 28 *Henry VIII*, cap. 15.

“Agreements, statutes, and ordinances, established by the ancients for the cases of merchants and mariners and masters of vessels.”—*Consulat de la Mer*.

“Judgments of the sea, of masters, of mariners, and merchants, and all their doings.”—*Rules of Oleron*.

“Ordinances that masters and merchants observe among themselves, in subjects of maritime law.”—*Coutumes d'Amsterdam*, etc.

“Water-law, as established by the merchants and masters.” *Laws of Wisbuy*.

“Directions for those who pursue commerce and put to sea.”—*Guidon de la Mer*.

“All business, civil and maritime, whatsoever, commenced, or to be commenced, between merchants, or between owners and proprietors of ships and other vessels, and merchants or other whomsoever, with such owners and proprietors of ships, and all other vessels whatsoever.”—*Commission to Colonial Governor*.

“To take cognizance of, and proceed in all causes, civil and maritime, and in complaints, contracts, debts, exchanges, policies of assurance, accounts, charter parties, agreements, bills of lading of ships, and all matters and contracts, which in any manner whatsoever relate to freight due for ships hired and let out, transport money, bottomry, or which are affairs between merchants, or between owners and proprietors of ships, or other vessels, and merchants, or other persons with owners and proprietors of ships and all other vessels.”—*Commission to Colonial Vice-Admiralty Judge*.

It will be observed that these are extracts from the earliest and most authentic evidences of the maritime law, throughout the whole coast of modern civilization in Europe and America; and the concurrence of all these authorities cannot fail to show that the maritime law is, and always has been, The Law of Ships and Vessels and Naval Commerce.

§ 147. Particular Instances of Maritime and Non-Maritime Causes.

In the American admiralty, the question as to whether a certain cause of action or contract is maritime or not has been brought before the courts in many cases, and while the general jurisdiction over maritime affairs is admitted, it is not always easy to follow the reasoning which has led the courts to decide whether the particular

cause was within or without the jurisdiction. Suits have been sustained as resting on maritime contract in the following cases, viz.: On an insurance policy;¹⁸ against an owner of cargo in general average;¹⁹ for weighing, inspecting and measuring cargo;²⁰ for cooping cargo;²¹ for compressing cargo;²² for the services of a watchman;²³ a diver;²⁴ an average adjuster;²⁵ a shipping agent;²⁶ for the use of a dry-dock;²⁷ for removing ballast;²⁸ for lockage in a river;²⁹ for wharfage;³⁰ for insurance premiums;³¹ for launching a vessel which has been driven ashore;³² for repairing a scow;³³ for supplying nets to a fishing vessel;³⁴ for the charter of a vessel yet to be built;³⁵ for services as watchman;³⁶ on a bond given by charterer for due performance of his charter;³⁷ on a contract guaranteeing a letter of credit on security of a vessel's freight;³⁸ for reserving cargo space on a ship, and, on the part of the shipper, agreeing to fill such space;³⁹ on a contract to act as sailors to fishing grounds, to fish, and to can and load the fish on shore;⁴⁰ by one to furnish vessels, and by another to furnish cargo for such vessels;⁴¹ by a broker who chartered a ship for another in his own name, and

¹⁸ *Ins. Co. v. Dunham*, 77 U. S. (11 Wall.) 1.

¹⁹ *The Bark San Fernando*, 12 F. R. 341.

²⁰ *The River Queen*, 2 F. R. 731.

²¹ *The E. A. Baisley*, 13 F. R. 703.

²² *The Wivanhoe*, 26 F. R. 927.

²³ *The Erinagh*, 7 F. R. 231; *The Seguranca*, 58 F. R. 908. But a contractor who furnishes watchmen has no lien. *Id.*

²⁴ *The Murphy Tugs*, 28 F. R. 429.

²⁵ *Coast Wrecking Co. v. Phoenix Ins. Co.*, 7 F. R. 236.

²⁶ *Haveron v. Goelet*, 88 F. R. 301; *Contra*, *The Retriever*, 93 F. R. 480.

²⁷ *The Vidal Sala*, 12 F. R. 207.

²⁸ *The Windermere*, 2 F. R. 722.

²⁹ *The Bob Connell*, 1 F. R. 218.

³⁰ *Ex parte Easton*, 95 U. S. 68; *Braisted v. Denton*, 115 F. R. 428.

³¹ *The Illinois*, 2 *Flip.* 383. But see *The Daisy Day*, 40 F. R. 603.

³² *The Ella*, 5 *Hughes* 125.

³³ *Endner v. Greco*, 3 F. R. 411.

³⁴ *The Hiram R. Dixon*, 33 F. R. 297.

³⁵ *The Baracoa*, 44 F. R. 102.

³⁶ *The Maggie P.*, 32 F. R. 300; *The Jos. Nixon*, 43 F. R. 926; *The Hattie Thomas*, 59 F. R. 297; *Contra*, *The America*, 56 F. R. 1021; *Williams v. The Sirius*, 65 F. R. 226.

³⁷ *Haller v. Fox*, 51 F. R. 298; *Contra*, *Pac. Surety Co. v. Leatham etc. Co.* 151 F. R. 440.

³⁸ *Huntington v. Proceeds of the Advance*, 72 F. R. 793.

³⁹ *Baltimore Packet Co. v. Patterson*, 106 F. R. 736.

⁴⁰ *Dominico v. Alaska Packers Assn.*, 112 F. R. 554.

⁴¹ *Graham v. Oregon R. & N. Co.*, 134 F. R. 454, 135 F. R. 608.

sued the latter for refusal to accept the charter and for expenses and brokerage fees;⁴² for breach of an agreement to insure cargo.⁴³

Causes have been dismissed, as not resting on maritime contracts, in the following cases, viz.: For storage of sails;⁴⁴ for storage of cargo in vessel after voyage ended;⁴⁵ for services of a ship-broker;⁴⁶ for wharfage of a vessel while laid up for the winter;⁴⁷ for receiving and storing cargo on a vessel during the winter;⁴⁸ for obtaining a concession to dig guano;⁴⁹ for a lease of a bar on a vessel;⁵⁰ on a contract to navigate a raft;⁵¹ on a contract by a master to carry cargo, sell it, and account for the proceeds;⁵² for services in purchasing a vessel;⁵³ for services as freight and passenger agent;⁵⁴ on a contract to procure insurance for a vessel;⁵⁵ for advertising steamer excursions;⁵⁶ for false representations leading up to the making of a policy of marine insurance, or a suit to reform such policy;⁵⁷ on an agreement to reimburse a steamship company for railroad charges advanced;⁵⁸ for services as shipping agent;⁵⁹ for commissions as broker in negotiating a charter party;⁶⁰ against an insurance broker under a state statute which makes such broker personally liable on contracts of insurance made by him on behalf of companies not authorized to do business in such state;⁶¹ for the lease of a wharf;⁶² for supplying

⁴² *Adler v. Galbraith Bacon & Co.*, 156 F. R. 259.

⁴³ *Nash v. Bohlen*, 167 F. R. 427.

⁴⁴ *Hubbard v. Roach*, 2 F. R. 393. See *post*, § 205.

⁴⁵ *The Richard Winslow*, 67 F. R. 259; 71 F. R. 426.

⁴⁶ *The Thames*, 10 F. R. 848; *The Crystal Stream*, 25 F. R. 575; *The Chilian*, 58 F. R. 697; see note 42.

⁴⁷ *The Murphy Tugs*, 28 F. R. 429.

⁴⁸ *The Pulaski*, 33 F. R. 383.

⁴⁹ *A Cargo of Phosphate*, 15 F. R. 285.

⁵⁰ *The Illinois*, 2 Flip. 383.

⁵¹ *A Raft of Spars*, 1 Flip. 543.

⁵² *The Julia*, 37 F. R. 369.

⁵³ *Doolittle v. Nobeloch*, 39 F. R. 40.

⁵⁴ *The Humboldt*, 86 F. R. 351; *Richards v. Hogarth*, 94 F. R. 684; *The Harvey & Henry*, 86 F. R. 656; see note 42.

⁵⁵ *Marquandt v. French*, 53 F. R. 603; *The City of Clarksville*, 94 F. R. 201; *Reliance Lumber Co. v. Rothschild*, 127 F. R. 745. See *Nash v. Bohlen*, 167 F. R. 427.

⁵⁶ *Turner v. The Havana*, 54 F. R. 201.

⁵⁷ *Williams v. Prov. Wash. Ins. Co.*, 56 F. R. 159.

⁵⁸ *Pacific Coast S. S. Co. v. Moore*, 70 F. R. 870; 76 F. R. 993.

⁵⁹ *The Retriever*, 93 F. R. 480; *Contra*, *Haveron v. Goelet*, 88 F. R. 301.

⁶⁰ *Taylor v. Wier*, 110 F. R. 1005; *Brown v. West Hartlepool Steam Nav. Co.*, 112 F. R. 1018; *Richard v. Holman*, 123 F. R. 734.

⁶¹ *Reliance Lumber Co. v. Rothschild*, 127 F. R. 745.

⁶² *The James T. Furber*, 129 F. R. 808; *The James T. Furber*, 157 F. R. 126.

fishermen bound on a fishing voyage with such articles as tobacco, clothing, rubber boots, etc.;⁶³ on a traffic agreement between a railroad company and a steamship owner for the operation of a through line of transportation;⁶⁴ on a contract for a boys' school to be conducted on shipboard;⁶⁵ and on a bond given by charterer for due performance of the charter party.⁶⁶

⁶³ *The Mary F. Chisholm*, 129 F. R. 814.

⁶⁴ *Pacific Coast S. S. Co. v. Moore*, 70 F. R. 870, 76 F. R. 993; *Graham v. Oregon R. & N. Co.*, 134 F. R. 454, 135 id. 608.

⁶⁵ *The Pennsylvania*, 154 F. R. 9.

⁶⁶ *Pacific Surety Co. v. Leatham, etc., Co.*, 151 F. R. 440; *Contra, Haller v. Fox*, 51 F. R. 298.

CHAPTER XV.

SHIPS AND VESSELS.

§ 148. What is a Ship?

The word Ship is a general term, and in the law is equivalent to *vessel*. It is defined, "a locomotive machine adapted to transportation over rivers, seas and oceans."

"Sub vocabulo navis omnia navigationum comprehenduntur.

*"Navem accipere debemus sive marinam, sive fluviatilem, sive in aliquo stagno naviget."*¹

A ship is born when she is launched, and lives so long as her identity is preserved.²

Whether the old tradition, that the first idea of the canoe was suggested by a split reed floating on the water, be true, or whether the simple raft was not the first instrument of maritime locomotion and transportation, it is not necessary to inquire; nor whether the tiny sail of the nautilus, or the web foot of the water-fowl, suggested the first means of propulsion. It is, however, certain that ships and vessels, in all their varieties of construction, and all their modes of propulsion, are but the more or less perfect combinations of the canoe and the raft, the sail and the paddle, as human ingenuity and science, in the progress of civilization and art, have removed old difficulties and suggested new expedients, till vessels are the most perfect and wonderful productions of human art; and in all the stages of their progress, from the humble catamaran and balsa to the majestic steamer of our day, they have been the great agents of exploration and trade, and the formidable instruments of individual and national plunder, as well as of defence and legitimate conquest.³

§ 149. Size does not determine.

Questions have sometimes arisen, how far size, capacity, purpose and mode of propulsion must enter into the definition of a ship or vessel under the maritime law, and cases are found in the books, in

¹Malynes, 123, 141; 1 Boulay Pat. 100, 101; 1 Pard. 97; Enc. Am., Art. Ship.

²Tucker v. Alexandroff, 183 U. S. 424.

³Falconer's Dict. Art. Naval Architecture; Sea Laws, 446; 1 Molloy, 307; Falc. Dict. Catamaran.

which ships or vessels are denied that character because their size was small compared with the more capacious constructions of modern times, and because they were employed in the humble occupations of agricultural or agrestic commerce. But to those structures can hardly be denied the character of ships and vessels which, in every particular, are superior to the ships and vessels of those countries and periods in which the great codes of maritime law were promulgated and enforced; nor can it make any difference whether the vessel is propelled by the wind, the tide, screw or paddles; by steam, by naphtha,⁴ by animals, or by the human arm; or towed by another vessel.⁵ The English Merchant Shipping Act excludes from the term boats propelled by oars.

§ 150. The Purpose determines.

Under the name "*navis*, ship," says Malynes, "is all kind of shipping understood, and *navigium*, vessel, is a general word, many times used for any kind of navigation. So that it is not of any moment to describe the diversity of ships, as carracks, galleons, gal-leasses, gallies, centauries, ships of war, fly boats, busses, and all other kinds of ships and vessels." Each nation has its mode of construction, rigging, and navigation, and its peculiar kind of craft; but all are ships and vessels which are manned by a master and crew, and are devoted to the purposes of transportation and commerce, whether in the fisheries or in mere trade. A scow, a lighter, a ferry-boat, and probably a raft or timber ship, under certain circumstances, would be held to be a ship or vessel, and subject to the same maritime law as other vessels. It is not the form, the construction, the rig, the equipment, or the means of propulsion that establishes the jurisdiction, but the purpose and business of the craft, as an instrument of naval transportation.⁶

⁴ The *Mary Powell*, 92 F. R. 408.

⁵ N. Y. Law Rep. 373; *Gibbons v. Ogden*, 22 U. S. (9 Wheat.) 1; *Thackeray v. The Farmer*, Gilp. 524; *The U. S. v. Jackson*, 4 N. Y. Leg. Ob. 450; *Van Santwood v. The John B. Cole*, id. 373, Fed. Cas. 16875; *Murray v. Ferry-boat F. B. Nimick*, 2 Fed. Rep. 86; *The Robert W. Parsons*, 191 U. S. 17. Seaman's wages accrue on a vessel of less than 5 tons; *The Pioneer*, 21 F. R. 426.

⁶ The following structures have been held to be within admiralty jurisdiction.—A raft: *Muntz v. A Raft*, 15 F. R. 555; *Seabrooke v. A Raft* 40 F. R. 596; *The F. & P. M. No. 2*, 33 F. R. 511.—A floating bath house: *Tebo v. The Mayor*, 61 F. R. 692.—A dredge: *McRae v. Bowers D. Co.*, 86 F. R. 344; *Aitcheson v. Dredge*, 40 F. R. 253; *The Atlantic*, 53 F. R. 607; *Steam Dredge No. 1*, 87 F. R. 760; *McMaster v. One Dredge*, 95 F. R. 832; even when its dredging is not connected with any navigable channel: *Bowers Hy. Dredging*

§ 151. Ships Under United States Statutes.

The statutes of the United States in various cases refer to the size of ships and vessels, and it must be held that vessels of the classes described as ships and vessels in the statutes are, for the purposes of the maritime law, ships and vessels. By the registry acts, all ships and vessels employed in the foreign trade, except upon the northerly inland frontier, must be registered and recorded,⁷ and among others are mentioned vessels not exceeding fifty tons.

§ 152. Coasters.

Vessels engaged in the coasting trade, must be enrolled or licensed, if they be of the burthen of five tons or upwards.⁸ And they are all uniformly spoken of in the statutes, as "ships and vessels." And some of the ships of Columbus, in which he traversed an unknown ocean, on the greatest maritime enterprise of the world, of Cortes, seeking to conquer a populous empire, of the buccaneers, the terror of armed fleets and of fortified cities, were inferior in size to the small craft that carry on commerce on our smaller lakes and rivers. "The first discoverers of America committed themselves to the unknown ocean, in barks, one not above fifteen tons, Frobisher in two vessels of twenty or twenty-five tons, Sir Humphrey Gilbert in one of ten tons only."⁹

§ 153. Vessels carrying all Cargoes.

And vessels devoted especially to the humbler commerce of agricultural productions, or of the homespun fabrics of the farm and the mechanics' shop are, in the same manner, to be considered ships

Co. v. Federal Contracting Co., 148 F. R. 290; and the scows of the dredge; *The Starbuck*, 61 F. R. 502; *The Alabama*, 22 F. R. 449. Quere as to dredge: *In re Hydraulic Dredge*, 80 F. R. 545.—A scow fitted as a houseboat: *Rogers v. A Scow Without A Name*, 80 F. R. 736.—A flatboat with pile driver: *Lawrence v. Flatboat*, 84 F. R. 200, *aff'd* 86 F. R. 907.—A barge used for storage and transportation: *Wood v. The Wilmington*, 48 F. R. 566.—A "pump-boat," or floating structure especially constructed to pump out barges: *Charles Barnes Co. v. One Dredge Boat*, 169 F. R. 895. The following have been held to be not within admiralty jurisdiction.—A dry dock: *Cope v. Vallette Dry Dock Co.*, 119 U. S. 625; *The Warfield*, 120 F. R. 847; *Snyder v. Dry Dock*, 22 F. R. 685. See *The Two Barges*, 46 F. R. 204.—A marine pump: *The Big Jim*, 61 F. R. 503.—A scow platform: *Ruddiman v. A Scow Platform*, 38 F. R. 158.—A pile driver: *Mullerweisse v. Pile Driver E. O. A.*, 69 F. R. 1005. See, also, generally, *Endner v. Greco*, 3 F. R. 411; *The Ella B.*, 24 F. R. 508; *Woodruff v. Covered Scow*, 30 F. R. 269; *Murray v. The F. B. Nimick*, 2 F. R. 86; *Disbrow v. The Walsh Bros.*, 36 F. R. 607.

⁷ Rev. Stats., § 4131, 4318.

⁸ Rev. Stat., § 4131, 4318 *et seq.*

⁹ Quarterly Review.

and vessels, and subject to the maritime law. It can make no difference in the principle, whether the ship or vessel be loaded with tea from Canton, coffee from Rio, cotton from Mobile, tobacco from Richmond, flour from Baltimore, coal from Liverpool or Philadelphia, onions from Wethersfield, or with pork, poultry, butter, cheese, fruits, and other articles of produce from the farms and villages between the large ports—all these are the agricultural products of their localities. And in the same manner, silks, cashmeres, crapes, laces, and cloths from the foreign looms, and liquors from abroad, are no more cargo, or merchandise, or goods, than boots and shoes, home-made clothes, cider, whiskey, wooden clocks, shoe pegs, and other coarse articles of manufacture, which often fill the sloops and schooners engaged in the coasting trade of the rivers and bays of the United States. They are the manufactures of their localities, and the vessels that carry them are the ships and vessels of the maritime law, even though they do not make the three years' voyages of Solomon to Tarshish, for "gold and silver, ivory, and apes and peacocks." The earlier, as well as the later codes of maritime law, expressly embrace the vessels employed in this class of commerce, and it is not easy to see how a doubt was ever raised on the subject.¹⁰

§ 154. Canals and Canal Boats.

The jurisdiction of the admiralty over canals and their flotillas, in general propelled by the power of animals, has become firmly established. It was denied in the early history of the admiralty of this country on the theory, since disapproved, that the jurisdiction depended upon the presence of the tide,¹¹ and also upon the theory that a canal boat is not a *vessel* within the meaning of the admiralty law.¹² The point has been pressed, also, that, as canals are ordinarily wholly within the limits of a State, they are therefore wholly within its jurisdiction. This would have made a distinction between a canal like the Erie Canal and a great international canal like the Suez. In 1862, Dr. Lushington took jurisdiction of a collision occurring in the Great North Holland Canal, but did so solely on the ground that the English Admiralty Jurisdiction Act gave to the court jurisdiction over any claim for damage done by any ship,—which did not touch the question as raised in this country.¹³

¹⁰ *Thackarey v. The Farmer*, Gilp. 524; 2 Chronicles, chap. 9, 21.

¹¹ *Boon v. The Hornet*, Crabbe, 426; *McCormick v. Ives*, Abb. Adm. 418.

¹² *The Ann Arbor*, 4 Blatch. 205. See *The John B. Cole*, Fed. Cas. No. 16875.

¹³ *The Diana*, Lush. 539.

§ 155. Canals. II. The Jurisdiction over Canals Sustained.

In 1877 the question of the jurisdiction of the admiralty over the canals of this country was presented to the Supreme Court by an application for a writ of prohibition to the District Court for the Eastern District of New York in the case of the *Monitor*¹⁴ in which case that court had entertained jurisdiction of a collision on the Raritan canal, connecting the waters of the Delaware River with New York Bay. The Supreme Court was equally divided on the question of jurisdiction, and accordingly denied the application, without opinion. In 1884 the question was again submitted to the Supreme Court in *Ex Parte Boyer*¹⁵ on an application to prohibit the District Court for the North District of Illinois from entertaining jurisdiction of a collision which had occurred on the Illinois and Michigan Canal, which connects Lake Michigan and the Chicago river with the Illinois river and the Mississippi. The jurisdiction was sustained on the ground that the canal was a part of the public navigable waters of the United States, and hence within the legitimate scope of the admiralty jurisdiction conferred by the constitution and statutes of the United States; the court saying that whether a canal was wholly artificial, or wholly within the body of a state and subject to its ownership and control, or whether, at the time of the collision, one or the other of the vessels was on a voyage from one place to another in the same state was immaterial. But the court reserved the question as to whether the jurisdiction would extend to waters wholly within the body of a state and from which vessels cannot so pass as to carry on commerce between places in such state and places in another state or in a foreign country.

§ 156. Canals. III. Canal-boats are Ships and Vessels.

The matter came again before the Supreme Court in 1903 in the case of the *Robert W. Parsons*,¹⁶ which presented the question whether or not the admiralty jurisdiction of the Federal Courts included canal boats so exclusively that a lien for repairs upon a canal boat used in navigation wholly within the State of New York, i. e., upon the Erie Canal and the Hudson River, could not be enforced in the State Court. The statute of New York, which created liens on vessels in certain cases, expressly stated that if the lien were founded upon a maritime

¹⁴ *The Monitor*, 9 Ben. 78.

¹⁵ *Ex parte Boyer*, 109 U. S. 629. See *Malony v. City of Milwaukee*, 1 F. R. 611, decided in 1880.

¹⁶ *The Robert W. Parsons*, 191 U. S. 17.

contract it could only be enforced in the courts of the United States. The Supreme Court said that the attempted denial of exclusive jurisdiction on the part of the admiralty court must rest upon one of two propositions, i. e., because the cause of action arose upon an artificial canal, or because a canal boat is not a ship or vessel in the contemplation of the maritime law. The court followed *Ex Parte Boyer* as to the first point and held that the waters of the Erie Canal are public navigable waters, though the court still reserved the question whether waters which, though navigable, are wholly territorial and used only for local traffic, are to be considered as navigable waters of the United States. And as to the question whether canal boats are to be regarded as ships and vessels within the meaning of the admiralty law, the court held that they are to be so regarded, holding further, that it mattered not, on the question of jurisdiction, that the repairs were made in dry dock, or that the contract for such repairs concerned a vessel employed wholly in navigation within the borders of a single State.

§ 157. What the term Ship includes.

A ship is usually described as consisting of the ship, her tackle, apparel, and furniture, or the steamer, her engine, tackle, etc. This includes the hull and spars, or the hull and engine, which constitute the ship or the steamer; the rigging, which constitutes the tackle; the sails, which are the apparel; the anchors, and numerous utensils for ship's use, which are the furniture. This does not include the boats, nor the ballast.¹⁷

§ 158. The Same though changed.

A ship is always the same ship, although the original materials of which it was composed may, by successive repairs and alterations, have been in the course of time entirely changed,¹⁸ and if a ship be entirely taken to pieces, without the intention of reconstruction, and the same materials are reconstructed into a ship in precisely the same manner, it would not be the same but another ship.¹⁹

¹⁷ *Sea Laws*, 444; *The Dundee*, 1 Hag. Ad. R. 124; 1 Molloy, 313; *Nouveau Valin*, 36; *The Endless Chain Dredge*, 40 F. R. 253; *A Raft of Ties*, 40 id. 596; *The City of Pittsburgh*, 45 id. 699.

¹⁸ *Tucker v. Alexandroff*, 183 U. S. 424.

¹⁹ *Sea Laws*, 443-4; *Malynes*, 123; 1 Boulay Paty, 102, 104; 1 Molloy, 312.

CHAPTER XVI.

SEAS—LAKES—RIVERS—CANALS.

§ 159. Jurisdiction over Inland Waters Now Established.

The greater portion of the present chapter is retained in the fourth edition of this work, as originally written, not for its present value as an exposition of the admiralty jurisdiction over the inland waters of this continent, but for its historical interest, and as illustrative of the growth of the acknowledged admiralty jurisdiction in the past sixty years. The author, writing before 1850, deemed it necessary to argue at length that the admiralty jurisdiction covered the waters of the lakes, rivers and inland waters of the country. The question is never raised to-day, the Supreme Court in one case after another having affirmed the jurisdiction. The *Genesee Chief*¹ explained the jurisdiction over the Great Lakes. The cases of the *Magnolia* and the *Hine*² sustained the jurisdiction over the rivers. *Ex parte Boyer*³ established it over canals. The admiralty jurisdiction extends over all of the public navigable waters of the United States, and such waters may lie wholly within the boundaries of a State and yet be public waters.⁴ Navigability alone, however, is not the test as to whether or not specified waters are public waters of the United States: the inland lakes of certain States are navigable, but have never been held to be public waters of the United States.⁵ But where waters are navigable and form a highway over which passes or may pass commerce between the several States and so on to the ocean and to foreign lands, then the waters are public navigable waters of the United States and within the admiralty and maritime jurisdiction.⁶

With this interruption, there follows the author's argument for the jurisdiction of the admiralty over inland waters.

¹ *The Genesee Chief*, 12 How. 443.

² *The Magnolia*, 20 How. 296; *The Hine v. Trevor*, 4 Wall. 555; *The Eagle*, 8 Wall. 15; *In re Garnett*, 141 U. S. 1.

³ *Ex Parte Boyer*, 109 U. S. 629.

⁴ *U. S. v. Burlington, etc., Ferry Co.*, 21 F. R. 331.

⁵ *U. S. v. Burlington, etc., Ferry Co.*, 21 F. R. 331.

⁶ *Maloney v. City of Milwaukee*, 1 F. R. 611.

§ 160. The High Seas.

A ship is none the less or more a ship, because she is confined to fresh or salt water, or running or stagnant water. The phrases, *the sea*, *the high sea*, *the high seas*, are frequently used in connection with the admiralty jurisdiction. *The high sea*, *the open sea*, are phrases used to distinguish the expanse and mass of any great body of water, from its margin or coast, its harbors, bays, creeks, inlets. *High seas*, in the plural number, more properly means the oceanic mass of waters, which is composed of many subdivisions of seas and oceans.⁷

§ 161. The Sea. I.

The sea, what is it in the legal sense? It means, when used by a nation or people, the large navigable waters, on which that people have intercourse or commerce in ships and vessels. On islands in the ocean, it means the ocean; in the languages of the South of Europe, it means the Mediterranean; on the Baltic Sea, the White Sea, the Zuyder Zee, the Sea of Geneva, the Black Sea, the Sea of Marmora, the Sea of Azof, the Caspian Sea, the Sea of Aral, the Red Sea, the Dead Sea, the Sea of Galilee, it means the waters of those seas respectively. In classic Latin and Greek, ancient and modern, and in the vernacular tongue of those who dwell on the shores of those seas, and carry on commerce on their waters, those waters are the sea, and the vessels which navigate them are ships. In the 107th Psalm, the phrase, "they who go down to the sea in ships," is a strictly literal translation of the Greek of the Septuagint, and the Latin of the Vulgate; and in all these languages, precisely the same words are used for sea, and for ship, as are used in Mark iv. 1, for the little sea of Galilee, and the vessels in the port of Capernaum; and the same words are in constant use throughout the Scriptures, for all sorts of navigable waters and navigating vessels. Virgil uses the word *mare* for the river Timavus, and it was in common use by all writers in Latin for any large body of navigable waters, and an adjective was added to give it a specific use. *Mare inferum*, *superum*, *Tyrhenum*, *Tuscum*, *Adriaticum*, *Ionicum*, *Mare magnum*, *Mare oceani*.⁸

§ 162. The Sea. II.

The visible flux and reflux of the tide is by no means necessary to

⁷ *Waring v. Clarke*, 46 U. S. (5 How.) 441; *U. S. v. Rodgers*, 150 U. S. 249. The term "high seas," as used in Rev. Stat., § 5346, is applicable to the open, unenclosed waters of the Great Lakes. *Id.* See *Bigelow v. Nickerson*, 70 F. R. 113.

⁸ *Waring v. Clarke*, 46 U. S. (5 How.) 441; *Ains. Dict. Mare*.

constitute the sea. There are no visible tides in the Baltic, the Black, the Caspian, the Aral, the Marmora, the Azof, the Dead Sea, or the Sea of Galilee. We say visible tides, for, if the tides be the result of the moon's attraction, then there must be a tide in all large bodies of water, for that attraction must be universal and irresistible; and although not easily perceptible, because of the restless character of the fluid, still a tideometer might be constructed, with such delicate arrangements, as to show the attraction of the moon with as much certainty as the heat in her winter rays is measured by delicately constructed thermometers. If the jurisdiction of a court should be made to depend upon such a criterion instead of the character of the controversy, such an instrument, instead of the arguments of counsel, would be necessary to enlighten the court.

§ 163. The Sea. III.

The Mediterranean Sea was the great theatre of all the maritime commercial enterprise of the early ages, of which we have any knowledge. No one ever doubted that cases on that sea were cases of admiralty and maritime jurisdiction; yet there is always a current running the same way, as regularly as in the Mississippi; and the Baltic, the White, the Black, and the Caspian seas have no tide, but like our inland seas, the great western lakes, they have at intervals, longer or shorter, a rise and fall of the water, which is the result of atmospheric pressure, of the force of winds, of uncertain and variable inflowing currents or of ocean tides, that, by irregular and obstructed subterranean channels, manifest their power in irregular spasmodic throes.* If civilization and commerce had first had their harbors, and

* Falconer's Dict. 559-60.

"CHICAGO, Sept. 27.—The water of Lake Michigan rose three feet and sank as much within five minutes during Sunday night's thunderstorm. It did considerable damage to small boats and caused the crews of the various life-saving stations to scramble from their beds.

"The river men declared the phenomenon to be a tidal wave, but Professor Henry J. Cox describes the singular change in the lake level a psychrometrical occurrence.

"'Imagine a "dent" in the surface of the lake,' said Professor Cox, 'and you have a fair illustration of what happened. It must have measured several miles in diameter and can easily be reproduced at home by placing a glass bottom downward in a soup plate filled with water. The moment the glass sinks the water rises around the edges of the plate.

"'In a similar manner the barometrical pressure was increased in certain places and decreased in others during the thunder storm. Where the pressure was greater the water was forced downward and naturally sought the places where it was less. Chicago, being at the time of the storm the centre of

built their cities and their ships on the inland waters of the western continent instead of the eastern, then our majestic rivers and lakes, the inland waters of America, would have had the glory of exhibiting the necessity and establishing the principles of the maritime law of the world, as they have already been the theatre of some of the most brilliant naval and maritime exploits which have contributed to our national glory.

§ 164. Ebb and Flow of Tides.

It is not difficult to see how the matter of the tides has risen to a rank in relation to jurisdiction to which it is not entitled. At the first in England, the rise and fall of the tide was spoken of only in relation to the space between high and low water mark in tide waters, which was declared to be within the ebb and flow of the tide, and so within the admiralty jurisdiction, when the tide was in; but it had no relation to the general question of admiralty jurisdiction. "As far as the tide ebb and flowed," meant as far as high water mark on the shore, and not as far up the stream as the tide was perceptible. It had no relation to tideless waters. But in England, during the contests with the admiralty, the common law courts, as has been shown, seized upon anything for a pretext to further their views, and it was easy to make the flowing of the tide a limit, as well in the navigable rivers as on the sea coast. In the general maritime law, there is nothing that confines maritime transactions or the maritime law to tide waters or salt water. They are limited only to the affairs of ships and vessels, and those who sail or own or use or injure them.¹⁰

§ 165. Rivers and Lakes. I.

There can be nothing in the mere rise and fall of the water, which can affect the jurisdiction of courts, nor in the periodicity of the rise and fall, nor in the cause of that rise and fall. Periodical inundations and freshets exist in most rivers and lakes, and they are subject to some curious laws which are known, and to many others which have hitherto eluded discovery. It is sufficient to say, that

disturbance, was under a comparative vacuum, while other parts of the lake's surface were pressed upon by extraordinary atmospheric weight. This made the water rise at Chicago. As soon as the barometrical pressure was removed to another point the water rushed back.' N. Y. Sun, Sept. 28, 1904."

¹⁰ *Peyroux v. Howard*, 32 U. S. (7 Pet.) 324; *The Orleans v. Phoebus*, 36 U. S. (11 Pet.) 175; *The U. S. v. Coombs*, 37 U. S. (12 Pet.) 72; *Waring v. Clarke*, 46 U. S. (5 How.) 441; *U. S. v. Rodgers*, 150 U. S. 249.

they would form quite as respectable a source of legal jurisdiction and maritime law as any merely lunar influence.¹¹

§ 166. Rivers and Lakes. II.

The rivers are properly, and philosophically speaking, a part of the sea. This fact of physical geography is not stated for the purpose of thereby establishing a maritime jurisdiction in all or in any rivers. For the purpose of this question, navigability is the true test. And the court will take judicial notice that waters are navigable.¹² The jurisdiction does not depend upon the existence of tides or of salt, or the absence of currents, nor upon any of the characteristic points of distinction between rivers and oceans.¹³

§ 167. Land and Water Systems of the Earth.

The earth is made up of two great systems, if we may so say, the land system and the water system. "And God called the dry land earth, and the gathering together of the waters called He seas." The land and the water are each made up of numerous subdivisions, having generic and specific characteristic definitions. They are, nevertheless, respectively, one in a general sense. The land is all connected together, though we do not sometimes see the connection. The mountain, the valley and the plain exist as well at the bottom of the ocean as on the visible dry ground; and capes and promontories, isthmuses, peninsulas and islands are but portions of the land. So arms, inlets, bays, ports, rivers, straits and lakes are parts of the sea, as the branches of the tree, or the limbs of the human body are portions of the body. The waters of our little archipelago of New York, that wash the shores of Long Island, Staten Island, Manhattan Island, Bedlow's Island, Governor's Island, Ward's Island, Randall's Island, Blackwell's Island, etc., though they are all within counties of the state of New York, and within the harbor of New York, and are connected with the ocean in every direction by straits hardly more than a pistol-shot in width, do not lose their character as a part of the ocean, because those islands lie near each other, any more than the waters that surround the West India Islands or the islands of the Grecian archipelago, cease to be portions of the sea, because the islands of the sea lie clustered in their bosom. The

¹¹ *Jackson v. The Magnolia*, 61 U. S. (20 How.) 296.

¹² *The Apollon*, 9 Wheat. 362; *Lands v. A Cargo of Coal*, 4 Fed. Rep. 478.

¹³ *The Genesee Chief*, 53 U. S. (12 How.) 443; *The Commerce*, 66 U. S. (1 Black.) 574; *Hine v. Trevor*, 71 U. S. (4 Wall.) 555; *The Belfast*, 74 U. S. (7 Wall.) 624.

great ocean (for, in the general sense, there is but one ocean) is but the great central mass of water, like the trunk of a tree. It is the great reservoir from which water departs in vapor, to be condensed on the land, and rolled back in rivers to its original source, the ocean. If we could take in, in a panoramic view, the whole apparent aqueous system, we should see that the waters are all one mass, apparently as well as really, with the exception of here and there a lake with a subterranean outlet, and a few rivers that lose themselves in bibulous sands. This is the geographical and philosophical view of this great fact of the unity of the waters. "The gathering together of the waters called He seas." If the ocean and all its rivers and arms could be dried, and again filled, not by the supplies from rivers, but by welling up from its own depths, it would present the same appearance as before. The great rivers would be shorter, but they would be there, and filled with the ocean brine, which would send its vapors to the land, and all the old channels of the rivers would be again filled with their currents, and the never-ending circulation would be again in motion. It is all one mass of water, and it would be as rational to say that the peninsulas, promontories, isthmuses and islands are no part of the land, so far as the admiralty is concerned, as that the bays, creeks, channels, inlets, harbors and rivers are no part of the sea. For practical purposes, however, in relation to the admiralty and maritime law, we must be limited, not by any strict and technical limit, but by the purpose, the use, the subject-matter, for the purposes of commerce. Hence navigability, so far as water is concerned, is, on principle, the test of maritime jurisdiction.¹⁴ This, however, does not mean navigability for pleasure purposes or purely local trade; but navigability in the sense that the navigating vessels are engaged in trade which may extend beyond the boundaries of a state and even to foreign lands.

§ 168. Navigable Rivers.

The navigable rivers, up to the point of obstruction to the navigation, "*all navigable rivers below the first bridges,*" that is, so far as they are navigable, even in England, have been held to be within the admiralty and maritime jurisdiction. In the vice-admiralty courts of the colonies, the jurisdiction extended to "*public streams, fresh waters, rivers, and creeks.*"

¹⁴ *Waring v. Clarke*, 46 U. S. (5 How.) 441.

§ 169. The Judiciary Act of 1789.

The United States, by the first act of Congress in relation to the judiciary, passed Sept. 24, 1789, declared that the admiralty and maritime jurisdiction extended to "*all waters navigable from the sea by vessels of ten or more tons burthen.*" This language has disappeared from our statutes. It had become so thoroughly settled that the admiralty jurisdiction extended over such waters that on the revision of the statutes of the United States in 1873 these words were omitted in the revision, the other words giving the District Courts jurisdiction over "civil causes of admiralty and maritime jurisdiction" being considered all that was necessary to cover this clause as to seizures. But the early act is none the less valuable as a contemporaneous construction.¹⁵

§ 170. Acts of 1790 and 1798.

The act for the government and regulation of seamen in the merchant service, passed July 20, 1790, section 6, (Rev. Stat. §§ 4546, 4547) subjects all seamen and all ships and vessels "in the merchant service" (that is to say, not in the public naval service) to the jurisdiction of the admiralty in cases of mariner's wages, and it makes no allusion whatever to the sea or the tides. The act of July 16, 1798, for the relief of sick and disabled seamen, and the act of May 3, 1802, amending the same, expressly provide, that persons navigating coasting vessels, including "every boat, raft, or flat," going down the Mississippi, with the intention to proceed to New Orleans, shall be considered as *seamen* of the United States.¹⁶

§ 171. Other Acts.

The act "for enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," passed Feb. 18, 1793, and the previous act for registering and clearing vessels, etc., and the act of March 2, 1819, supplementary to the acts concerning the coasting trade, and the act of May 2, 1822, for the collection of duties on exports and tonnage in Florida, expressly include all the "*navigable rivers of the United States.*"

§ 172. Navigable Rivers within the Jurisdiction.

A uniform current of decisions and of practice in every court of the United States having admiralty jurisdiction, from the first estab-

¹⁵ The *Genesee Chief*, 53 U. S. (12 How.) 443; The *Daniel Ball*, 78 U. S. (10 Wall.) 557; The *Montello*, 88 U. S. (21 Wall.) 430.

¹⁶ But this has been held not to give the admiralty jurisdiction over a suit for raftsmen's wages: *A Raft of Cypress Spars*, 1 Flip. 543.

lishment of the courts, has settled the law, that all cases arising under these acts, are cases of admiralty and maritime jurisdiction. It must, therefore, be conceded, that principle and practice, the law and the reason of it, the acts of Congress and the decisions under them, all concur in declaring that navigable rivers are within the admiralty and maritime jurisdiction, for certain purposes at least; and the force of these views seem to have been fully felt by Judge Woodbury, in his dissenting opinion in the case of *Waring v. Clarke*, when he expressly declared that the maritime law of continental Europe would carry admiralty jurisdiction over all navigable streams.¹⁷

§ 173. Tide does not affect the Question.

There is no difference between the Mississippi, or any other navigable river, at its mouth and far inland, or between the ports of Cincinnati, St. Louis, Natchez, New Orleans, Georgetown, and the numerous other ports on the arms of the sea, except the tides, the currents, and the salt. If any of these can affect the jurisdiction, it must be, not the comparative strength of these elements, but their absolute philosophical existence, no matter how feeble. There cannot be jurisdiction more surely in the fearful tides of the Bay of Fundy and the Solway than in the gentler flow of hardly perceptible tides; in a current of one mile an hour, than in one of ten; in the intense saltness of the Dead Sea and the Great Salt Lake, than in the almost fresh waters of the Baltic and the Black seas. Currents exist in a greater or less degree, chemical analysis detect saline particles, and the influence of the moon's attraction must be felt in all large bodies of water.¹⁸

§ 174. Currents have not Affected it.

The existence of perpetual currents, flowing always the same way,

¹⁷ *Waring v. Clarke*, 46 U. S. (5 How.) 441, 475; *Smith v. The Pekin*, Gilp. 203; *Wilson v. Ohio*, id. 505; *New Jersey Steam Nav. Co. v. Merchants' Bank*, 47 U. S. (6 How.) 344; *The U. S. v. Jackson*, 4 N. Y. Leg. Ob. 450; *The Genesee Chief v. Fitzhugh*, 53 U. S. (12 How.) 443; *Fretz v. Bull*, id. 466; *Jackson v. The Magnolia*, 61 U. S. (20 How.) 296; *Raymond v. The Ellen Stewart*, 5 McLean, 269; *McGinnis v. The Pontiac*, 1 Newb. 130; *Scott v. The Young America*, id. 101; *Eads v. The H. D. Bacon*, id. 274.

¹⁸ The lakes were probably originally salt; 6 *American Register* 1810, p. 341.

Among other facts communicated at a recent meeting of the Chicago Historical Society, Colonel Graham stated his discovery of a lunar tidal wave upon Lake Michigan. From the comparatively small area of the body of water acted upon by the lunar influence, the co-ordinate of altitude could not but be small. When the moon is in conjunction with, or in opposition to, the sun, its average is about two-tenths of a foot.

has never been held to affect the jurisdiction of the admiralty. Under the equator, currents in the Atlantic are so violent, that they carry vessels very speedily from Africa to America, but absolutely prevent their return the same way. This current performs a continual circulation, setting out from the Guinea coast, in Africa, for example, thence crossing over the Atlantic ocean into the Gulf of Mexico by the south side of it, then, sweeping around by the bottom of the Gulf, it issues out by the north side of it, and thence takes a direction northeasterly along the coast of North America, till it arrives near Newfoundland, when it is turned in a circuitous manner backwards across the Atlantic again, upon the coast of Europe, and from thence southward to the coast of Africa, from whence it set out. It flows permanently, and in some places at the rate of five miles an hour. A boat, not acted on by the wind, would go from the Canaries to the coast of Caraccas in thirteen months; in ten months would make the tour of the Gulf of Mexico; and in forty or fifty days, would go from Florida to the banks of Newfoundland. It deposits, on the coast of Iceland and Norway, trees and fruits belonging to the torrid zone; and remains of a vessel burnt at Jamaica were found on the coast of Scotland. It is a great river in the midst of the ocean. Other permanent currents, of even greater force and regularity, exist in the Straits of Gibraltar, the Straits of Magellan, and St. George's Channel; and strong, constant currents, and variable and periodical currents of great force, exist in most of the straits and channels of the ocean, often, during their existence, entirely overcoming the tide.¹⁹

§ 175. Currents. II.

The Dardanelles is thirty-three miles long, and varies in width from half a mile to a mile and a half. Cocks are heard crowing from the opposite shores. Lord Byron swam across it in an hour and five minutes, swimming more than four miles because of the current, which is so rapid that no boat can row directly across. It is but a river, connecting two lakes. In ancient times, it had its commerce and its ships. More than four hundred years before the Christian era it was the scene of one of the greatest naval battles and victories known to ancient history.²⁰ And, although it can be navigated against the current only by the force of strong, favorable winds, or by steam,

¹⁹ Falc. 113, Art. Currents; Encyc. Am. Art. Currents.

²⁰ The battle of Aegospotami, 405 B. C., in which the Lacedaemonians, under Lysander, destroyed the fleet of the Athenians, and thus put an end to the Peloponnesian war.

in modern times it floats an immense commerce; and ships of the line, of the largest class, and armed fleets, pass through it from sea to sea. The fearful currents in the Straits of Magellan are known to all navigators. The great American rivers, those of a few furlongs width, and those many leagues wide, pour down their majestic torrents with such force that their turbid waters are carried to an immense distance into the ocean. They are rivers there, as much as on the land.

§ 176. Law affected by the Progress of Society.

It is universally conceded that the general principles of law must be applied to new kinds of property, as they spring into existence in the progress of society, according to their nature and incidents, and the common sense of the community. In the early periods of maritime commerce, when the oar was the great agent of propulsion, vessels were entirely unlike those of modern times. Each nation and period has had its peculiar agents of commerce and navigation, adapted to its own wants, and its own waters, and the names and descriptions of ships and vessels are without number. Under the class of mariners in the armed ship are embraced the officers and privates of a little army. In the whale-ship, the sealing vessel, the cod-fishing and herring-fishing vessel, the lumber vessel, the freighting vessel, the passenger vessel, there are other functions besides those of mere navigation, and they are performed by men who know nothing of seamanship; and, in the great invention of modern times, the steam-boat, an entirely new set of operatives is employed; yet at all times, and in all countries, all the persons who have been necessarily or properly employed in a vessel as co-laborers in the great purpose of the voyage, have, by the law, been clothed with the legal rights of mariners, no matter what might be their sex, character, station or profession.²¹

§ 177. Maritime Law looks to Substance, not Form.

This has been because the maritime law does not stick in the bark of a literal and technical construction, but looks at its rules with a liberal and rational regard to the subject-matter; to the substance, and not to the form. Should it not do so in relation to the waters, as well as the agents of commerce, and the principles of law? Should

²¹ Walker v. Sherman, 20 Wend. Rep. 648; Falcon. Dic. word Naval Architecture; Wilson v. The Ohio, Gilp. 505; Thackarey v. The Farmer, id. 524; Ord. de la Mar., Tit. VII.

the great inland waters of the American continent be denied the privileges which uniform judicial decision, and immemorial usage, have always allowed to those of Europe, as soon as discovery found, and commerce penetrated them? If modern science, art, and adventure should succeed in carrying profitable commerce through all parts of the frozen zones, and carry our ships to the very poles of the north and the south, would that commerce be denied the benefits of the maritime law, and its judicial jurisdiction, because there are no tides at the polar centres? No more could we, on principle, deny the same benefits to the great waters which the discovery of Columbus, in process of time, opened to a commerce outvaluing that of all antiquity.²² The American rivers, those of thousands of miles in length, like the shorter ones of the older settlements, have their shores covered with busy commercial cities, their rapid feeders with manufacturing towns, their valleys with farms, and bear on their currents, the merchandise, manufactures, and agricultural products of vast and varied territories. The maritime law is just as appropriate to and just as necessary to their wants as to those of the old world; and rational, sound, legal construction has not failed to give the benefit of it to them, as it has to the territories of the old world.

§ 178. Commerce of our Lakes and Rivers.

The whole maritime commerce of the world, at the time of the earlier and most universally acknowledged codes, was not equal to the present maritime commerce of the American lakes and rivers. The line of our lake coast is about 5,000 miles in extent, 2,000 of which is on the coast of a first-class power, foreign to the United States; and of the remaining 3,000 miles of lake coast, and of the 17,000 miles of navigable rivers, almost the whole lies at the same time in two or more states of our Union, which in all matters, independent of the national constitution, are foreign to each other.

§ 179. River and Lake Commerce. II.

On Lakes Champlain, Ontario, and Erie, in former times of war, the United States had more than forty armed vessels, from small craft of one gun, up to "tall admirals," of more than one hundred guns. Were they not ships and vessels? On those waters Perry and McDonough immortalized themselves. Were they not naval heroes? And their brave tars, were they not mariners? Did they not take prizes? Like the modern ocean, those lakes and rivers are now

²² Jackson v. The Magnolia, 61 U. S. (20 How.) 296.

navigated by vessels of every size and description, from vessels of thousands of tons burthen, down to the smallest commercial craft; clearing at custom houses hundreds of miles from the ocean, for all the ports of the states, and for foreign ports at the ends of the earth; and they must pass from one state jurisdiction to another, back and forth, hundreds of times, on a voyage from New Orleans to St. Louis.²³ They transport millions of passengers, bound from state to state, and from one nation to another, on the great errands of the infinitely diversified commerce of millions of people, on the shores of those waters, and they are freighted with the first fruits from fields of a domain reaching across more than forty-five degrees of latitude and one hundred degrees of longitude.

§ 180. River and Lake Commerce. III.

In all the arrangements of this lake and river commerce, there is nothing to distinguish it from the other maritime commerce of the world. There is not a contract or a wrong, not a want, a right or a duty, not a construction, a contrivance, a utensil, a material, or a supply, not an agent of commerce, animate or inanimate, that is met with on the widest, the stormiest, and the saltiest ocean, that has not its counterpart on these mighty rivers and lakes; and the same rules of law are to be applied to the controversies that arise there. A salvage, an average, a bottomry, a case of wages, of freight, of pilotage, of wharfage, on Lake Erie, the Mississippi, or the St. Lawrence, are as clearly cases of admiralty and maritime jurisdiction, and as much subject to the admiralty and maritime law, as similar cases in the Black Sea or the Baltic, the Straits of Magellan, the Dardanelles, or Long Island Sound. Their nature is the same everywhere, they are maritime everywhere.²⁴ If the Admiral of ancient times existed here, with the jurisdiction and functions of his palmiest days, as it was then in the local waters alone where his own nation claimed exclusive jurisdiction it would be now in our close seas, our harbors, lakes, and rivers, or over our own vessels, that his power and prerogative would be felt in the admiralty law.

²³ *Waring v. Clarke*, 46 U. S. (5 How.) 441; *Jackson v. The Magnolia*, 61 U. S. (20 How.) 296; *The Genesee Chief*, 53 U. S. (12 How.) 443; *The Belfast*, 74 U. S. (7 Wall.) 624; *The Eagle*, 75 U. S. (8 Wall.) 15; *U. S. v. Rodgers*, 150 U. S. 249.

²⁴ *Rossiter v. Chester*, 1 Doug. Mich. R. 154; *Gazzam v. Cincinnati Ins. Co.*, 6 Ohio R. 71; *The Genesee Chief*, 53 U. S. (12 How.) 443; *U. S. v. Rodgers*, 150 U. S. 249.

§ 181. The Admiralty Jurisdiction limited by Subject-Matter.

To recapitulate: on principle, it clearly cannot be the moon's attraction, the presence or absence of the tide, which determines the jurisdiction; nor the periodical rise and fall of the water: nor the presence or absence of saline particles in the water; nor the presence or absence of a current in the water; nor the size or character of the outlet, stream, or strait, by which the lake or sea is connected with a larger body, or with the ocean; nor that the water be an inland basin, land-locked, or land-surrounded sea or lake; nor that the water be a river; nor place or locality in matters of contract, but the subject-matter; nor the question, whether the common law has provided a remedy or not for similar cases; nor the question, whether the local municipal laws and officers can be resorted to.

The jurisdiction can depend upon nothing, in matters of contract, but the subject-matter, the nature and character of the controversy.²⁵ If that be connected with ships and shipping, commerce and navigation, the admiralty has jurisdiction, otherwise not. In matters of tort it can depend upon nothing but that the wrong occurred upon the sea, or upon navigable waters, the places where maritime commerce is had are the places over which the admiralty has jurisdiction of wrongs. "*Toutes affaires relatives à la navigation et aux navigateurs appartient au droit maritime.*"²⁶

²⁵ The Resolute, 168 U. S. 437.

²⁶ See 3 Pardessus Lois Mar. 451, The Steamship Jefferson, 215 U. S. 130.

another vessel, is one of the well known subjects of the admiralty jurisdiction.

When a wrong has occurred which has resulted in personal injury or death to a human being, either upon inland waters of a country, or upon the high sea, the question of liability of the ship and her owner is subject to the admiralty jurisdiction, the admiralty court at times taking cognizance of and enforcing the statute of a state or country which may have created the right of action.

The right given by statute to a shipowner to limit his liability in cases where a loss has occurred without his privity or knowledge and where such loss exceeds the value of his interest in the ship and her freight pending is, in America, a far more modern subject of the admiralty jurisdiction than many of those which have been heretofore mentioned, but nevertheless it is peculiarly a subject of that jurisdiction, and, except in a limited way, cannot be exercised at all by the courts of common law.

§ 183. The Building of Ships. L.

The admiralty courts of this country have no jurisdiction over contracts for the building of ships. This is because the contract is held to be not a maritime contract, for the reason that it is a contract made on land and to be performed on land, and the wages of the shipwright have no reference to the voyage to be performed. The Supreme Court so held in 1857 in the case of *People's Ferry Co. v. Beers*,¹ and has followed that holding both in dicta and decision in every subsequent case in which the subject has been presented or referred to.² Not only the building of the hull, but the supplying of the original equipment of the vessel, is held to be outside of the admiralty jurisdiction,³ on the theory that the vessel is not "built" until completed for the purpose designed, and whatever is supplied

¹ *People's Ferry Co. v. Beers*, 61 U. S. (20 How.) 393.

² *Roach v. Chapman*, 63 U. S. (22 How.) 129; *Morewood v. Enequist*, 64 U. S. (23 How.) 491; *The Belfast*, 74 U. S. (7 Wall.) 624; *Insurance Co. v. Dunham*, 78 U. S. (11 Wall.) 1; *Edwards v. Elliott*, 88 U. S. (21 Wall.) 532; *The Lottawanna*, Id. 558; *The J. E. Rumbell*, 148 U. S. 1; *Knapp v. McCaffrey*, 177 U. S. 638; *Tucker v. Alexandroff*, 183 U. S. 424; *The Robert W. Parsons*, 191 U. S. 17; *Graham and Morton Trans. Co. v. Craig Shipbuilding Co.*, 203 U. S. 577; *The Winnebago*, 205 U. S. 354.

³ *Roach v. Chapman*, 63 U. S. (22 How.) 129; *Edwards v. Elliott*, 88 U. S. (21 Wall.) 532; *The Winnebago*, 205 U. S. 354; *The Iosco*, Brown Ad. 495; *The Pioneer*, 30 F. R. 206; *In re Glenmont*, 32 F. R. 703; *The Paradox*, 61 F. R. 860. But see *The Eliza Ladd*, 3 Sawy. 519; *Revenue Cutter No. 32*, 4 Sawy. 143; *The Manhattan*, 46 F. R. 797.

to such a vessel for the purpose of making her what she is intended to be is part of her "building."

§ 184. The Building of Ships. II.

It is the duty of a text-book to state the law as it is found in the authoritative decisions of the Court of last resort, and that has been done in the preceding paragraph; but it is the privilege of a text-book to criticise the reasons which have led the court to announce the law, and even to query whether the law has been announced correctly.

In the first edition of this book, published in 1850, it was stated that contracts for building ships are maritime contracts, since all matters that concern shipowners and proprietors of ships as such, and shipwrights, are within the admiralty jurisdiction. In 1857 the Supreme Court, in *People's Ferry Co. v. Beers*,⁴ held that a contract for building a vessel is not a maritime contract, and in 1859, in the case of *Roach v. Chapman*,⁵ extended the holding to include the supplying of materials for the equipment of a new vessel; and down to the case of the *Winnebago*,⁶ in 1907, the court has held the same, and the holding has, of course, been followed by the inferior courts of the land.⁷ Unless the Supreme Court should hereafter decide differently, those cases,—or rather *that case* for *Roach v. Chapman* gave no reasons, but followed *People's Ferry Co. v. Beers* as authority,—will continue to be the law of the American admiralty.⁸

The following considerations, however, are worth noting in connection with the law as thus laid down:

The maritime law is a universal law, not peculiar to one clime or country or to one people, but extending over the whole civilized

⁴ *People's Ferry Co. v. Beers*, 61 U. S. (20 How.) 393.

⁵ *Roach v. Chapman*, 63 U. S. (22 How.) 129.

⁶ *The Winnebago*, 205 U. S. 354.

⁷ *The Pacific*, 9 F. R. 120; *The Count de Lesseps*, 17 F. R. 460; *In re Glenmont*, 32 F. R. 703, *affd.* 34 F. R. 402; *The J. C. Rich*, 46 F. R. 136; *The Paradox*, 61 F. R. 860; *The William Windom*, 73 F. R. 496.

⁸ "The right to sue in the court of admiralty upon contracts of this class is a subject of discussion which our ancestors brought with them from England before the first courts were established in the American colonies, and the debate upon it has continued through all the changes which have transpired in the judiciary of the country. The lawyers and litigants continue to contend for the right in the face of decisions of the courts, and they seem to be determined not to accept the decisions, or regard them as being decisive, and the decisions have not been uniform nor harmonious." Per Hanford, J., in *the Manhattan*, 46 F. R. 797.

world so far as it is concerned with maritime affairs,⁹ and it is founded, firstly, on reason, and, secondly, on precedent.

The ancient authorities on maritime law were unanimous in regarding a contract for building a ship as a maritime contract.¹⁰

⁹ "A case in admiralty does not, in fact, arise under the constitution or laws of the United States. These cases are as old as navigation itself; and the law, admiralty and maritime, as it has existed for ages, is applied by our courts to the cases as they arise." *American Insurance Co. v. 356 Bales of Cotton*, 1 Peters 511, 545.

¹⁰ "All civilians and jurists agree that in this appellation" [maritime contracts] "are included, among other things, . . . contracts for maritime service in the *building*, repairing, supplying, and navigating ships." *De Lovio v. Boit*, 2 Gall. 475.

By the civil law—"Whoever gives credit for *building*, or furnishing, or repairing a ship, has a lien upon it." "What any one gives credit for, for the purpose of *building*, repairing, furnishing, or outfitting, or even selling a ship, is a lien upon it." Dig. Lib. 42, Tit. 6, Art. 26, 34.

By the Consulat—"If a ship newly built, is sold at the suit of creditors, before it has been launched, or before it has made a voyage, the mechanics, caulkers, and other workmen, as well as those who have furnished timber, pitch, spikes, and other things necessary for the *building* of the ship, shall be preferred to all other creditors whatever, even to those who may have lent money, with a written declaration that it is to be used in the *building* of a vessel." Consulat de la Mer, ch. 32.

Cleirac, to the same effect, says,—"*Hypothecation is special and privileged for the wages of the carpenters, caulkers, and other workmen, and for those also who have furnished tar, pitch, casks, timber, spikes, oakum, and other materials for the building or repairing a vessel.*" Cleirac Jur. de la Marine, 351, Art. 6.

The Marine Ordinance of 1691 is equally clear,—"*The judges of the admiralty have jurisdiction exclusively of all others, and between all parties, of every thing which concerns the building, tackle, apparel, furniture, outfit, victualling, sale, and adjudication of vessels.*" Ord. de la Marine, Tit. 2, Art. 1.

In like manner, Valin, commenting on this article of the Ordinance,—"*There is never any dispute in relation to the objects expressed in this article, which concern the building, rigging, furniture, outfit, sale, and adjudication of vessels; (the italics are his,) and in truth what would be the function of admiralty courts, if they had not jurisdiction of such causes?*" 1 Valin 113.

Emerigon quotes with approbation, and as authority, the foregoing, and other similar passages, in chapter 12, sections 3, 4, 5, of his treatise on maritime loans, and on page 566, quarto edition, says,—"*There is nothing so much favored as the price of work and materials for the building of a vessel. Commerce and the state are interested in it. It is just that the workmen and material-men should enjoy the lien upon the thing, which is given them by the Marine Ordinance. They cannot be deprived of this privilege except when it is proved that they trusted the person, not the thing.*" Boulay-Paty, in more recent times, in his commentaries on the Commercial Code, in which the jurisdictional clauses of the Ordinance are re-enacted, sections 1, and 2, brings down to our own time, in equivalent words, this maritime law of all the ages as does also the Nouveau Valin.

The modern continental codes generally recognize a contract to build a ship as a maritime contract, and in many cases give a lien against the ship herself for the cost of building her.¹¹

Since the case of *People's Ferry Co. v. Beers*, every case in the Supreme Court which has directly decided, or *obiter* has said, that a contract for building a ship is non-maritime, has so decided, or has so said, not upon principle, but upon authority, and that authority—*People's Ferry Co. v. Beers*, with its followers.¹² The rule of *stare decisis*, when properly applied, is a sound one, and when the decisions are in fact *a series rerum perpetuo et similiter judicatarum* they furnish very high evidence of the law; but no number of decisions can furnish sufficient reasons for deciding contrary to law, and when a decision has been followed upon authority alone, it is one decision, of which the others are but echoes. *People's Ferry Co. v. Beers* stands alone, and stands opposed to the maritime law of practically all the world.

The reason assigned for that decision is that the contract is not maritime, because it is a contract made upon the land, to be performed upon the land, and the wages of the shipwright have no reference to the voyage to be performed. Other suggested reasons are found in

Even the English judges, with the King and his Council, in the resolutions of 1632, say, (Resolution 3, ante, § 71 at p. 47),—

"If suit shall be in the Court of Admiralty, for *building*, amending, saving, or necessary victualling of a ship, against the ship itself, and not against any party by name, but such as for his interest makes himself a party, no prohibition is to be granted, though this be done within the realm."

And under the commission of the Vice Admiralty Court of Massachusetts this jurisdiction was exercised, for in the records of the court is to be found a suit by a *builder* of a ship *in rem* for its price after it had been delivered. *Insurance Co. v. Dunham*, 78 U. S. (11 Wall.) 1 at p. 10.

And if we pass behind these great authorities to the original codes of all the maritime states and cities, which the wonderful industry and learning of Pardessus have brought together, in his great work, (6 vols. quarto,) "*Collection de Lois Maritimes Anterieures au xviiiie Siecle*," we find that the history, the text, and the commentary of the codes and collections of maritime usages, from the earliest periods of antiquity, agree as to the maritime character of contracts for building ships.

¹¹ See English Admiralty Court Act of 1861, 24 Vict. ch. 10; France—Code de Commerce, Art. 191; Germany—Civil Code, Sec. 647; Italy—Code of Commerce, Book iv, Title 1, Ch. 1, Art. 869, and same book and title, Ch. 2, Art. 879; Italy—Legge Transitoria Commerciale (Dec. 14, 1832), Art. 13; Norway, Sweden, Denmark—Maritime Code, Ch. 1, Art. 3; Belgium—Maritime Code (1880) Art. 4 (10-11); Portugal—Commercial Code, Art. 1300, Code of Commerce (1889) Book III, Title 1, Chap. 1, Art. 578, 587, 590; Russia—Maritime Code, Art. 1-3; Greece—adopted the French Code in 1835; Austria—See Matterlich's *Lois d'Autriche*, 102.

¹² The cases cited under the preceding paragraph.

the opinion, *i. e.*, that no lien in favor of a material-man can arise when the owner is present and orders the materials, and that no precedent could be found in the admiralty decisions of that day for holding that a ship builder has a lien for the price of his work. But that the real ground of the decision was to the effect that such a contract is non-maritime because it is made on the land and to be performed on the land is shown by the comments of the Supreme Court in *Roach v. Chapman*, 22 How. at p. 132; *Morewood v. Enequist*, 23 How. at p. 494; *Edwards v. Elliott*, 21 Wall at p. 555; *The J. E. Rumbell*, 148 U. S. at p. 11.

And as to that reason, or ground for the decision, it may be said that it is now settled that the place of making a contract does not determine the question whether it is maritime;¹³ all charters and bills of lading are made on the land. Moreover, it is not accurate to say that a building contract is to be performed on the land, since a very important part of it, such as the stepping of the masts of a sailing vessel, or the installation of the engine of a steamer, is almost invariably performed on the water, after the hull is launched;¹⁴ and delivery under the contract invariably takes place on the water. And, furthermore, it is begging the question to say that the *wages* of the shipwright have nothing to do with the voyage of the ship, when the *work* of the shipwright has everything to do with every voyage of the ship.

Also, when we observe that *People's Ferry Co. v. Beers* was decided at a time when the question of State rights was prominent before the country, and that the Supreme Court evidently regarded that political question as involved in the case,¹⁵ it is remarkable that the decision should have stood until the present day, founded as it is upon reasoning so vulnerable, and affected by a political controversy which has passed away.

The argument that the decision was without authority worthy of the name, and without merit as to its principle announced, has been

¹³ *Insurance Co. v. Dunham*, 78 U. S. (11 Wall.) 1.

¹⁴ It is noteworthy that in the *Winnebago* case (205 U. S. 354), which is the only Supreme Court case directly following *People's Ferry Co. v. Beers* and *Roach v. Chapman* in which the facts fully appear, and in every District court case which has followed *People's Ferry Co. v. Beers*, and which are cited above, note 7, *all of the work sued upon had been done after the hull had been launched, and hence, had been performed upon the water.*

¹⁵ "The question presented involves a contest between the State and Federal Governments." "The contest here is not so much between rival tribunals, as between distinct sovereignties, claiming to exercise power over contracts, property and personal franchises." Mr. Justice Catron, in *People's Ferry Co. v. Beers*, 63 U. S. (22 How.) at p. 401.

since urged upon the Supreme Court in the briefs of counsel, and has never been answered: the Supreme Court in every instance simply reiterating that the previous cases had stated the law.

§ 185. Jurisdiction over Owners.

The admiralty has jurisdiction of all matters that concern owners and proprietors of ships, as such. This embraces a large number of cases of almost every description. For the torts and contracts of the master, as such, the owners are liable; for whatever is a lien upon the vessel the owners are liable by virtue of that lien, to the extent of the value of the vessel, and, in many cases, to the whole extent of the demand. For the contracts of each other as owners, they are liable to third persons to their full extent *in solido*; and all these are cases of admiralty and maritime jurisdiction.¹⁶

§ 186. Possessory and Petitory Actions.

The admiralty has also jurisdiction of possessory and petitory suits, and of proceedings on the part of the owners for the removal of the master.¹⁷

Petitory suits are suits in which it is sought to try the title to a ship, independently of any possession of the vessel.¹⁸ A possessory action may be joined with a petitory action.

Possessory actions are actions to recover ships or other property,¹⁹ to which a party is entitled by right. They are analogous to the action of replevin or detinue at the common law, in which the specific property is recovered instead of damages. These actions are brought by owners to try the right to the possession of a ship, by masters or owners to recover possession. Possessory suits may be brought in all cases to reinstate the owners of ships, who have been wrongfully deprived of their property. This includes cases of restitution of captured property, and of vessels irregularly or illegally condemned and sold by the master without legal authority, or in an illegal or irregular manner.²⁰ In this country, the jurisdiction of the

¹⁶ Godolph. 43; Higgins v. U. S. Mail Steamship Co., 3 Blatchf. 284; The Majestic, 12 N. Y. Leg. Obs. 100; The Grafton, 1 Blatchf. 175; Vose v. Allen, 3 Blatchf. 289; Church v. Shelton, 2 Curtis C. C. R. 271; Knox v. The Minetta, Crabbe, 534; The Rebecca, Ware, 188; House v. The Lexington, 2 N. Y. Leg. Obs. 4; Howland v. Greenway, 63 U. S. (22 How.) 491; 2 Brown Civil and Ad. 131; Davis & Brooks v. The Seneca, Gilp. 11; Stinson v. Wyman, Davies' R. 172; The Paragon, Ware, 322.

¹⁷ The See Reuter, 1 Dod. 22; The Martin of Norfolk, 4 C. Rob. 240.

¹⁸ The Tilton, 5 Mason 465.

¹⁹ E. g. Cargo, The Dauntless, 7 F. R. 366; The Director, 26 F. R. 708.

²⁰ L'Invincible, 14 U. S. (1 Wheat.) 238; Manro v. Almeida, 23 U. S. (10

admiralty over all this class of cases is well settled.²¹ But it will not enforce a merely equitable title.²²

§ 187. Disagreements between Part Owners as to Voyages—Partition Sales—Bond for Safe Return.

Ships and vessels being usually owned in shares by several persons who are not otherwise partners,²³ it is evident that often dissensions may arise between the owners as to the employment of the ship. In such cases, one party may employ the ship, on giving security to the other. The Court of Admiralty has jurisdiction to enforce the law between the part owners, and to compel the one or the other party to give the required security.²⁴ Cases of licitation or sale, for the purpose of partition, are also within the power of the American admiralty, as they are of the European maritime courts.²⁵

Wheat.) 473; *The Tilton*, 5 Mason, 465; *The Dove*, 1 Gal. 585; *Taylor v. The Royal Saxon*, 1 Wall. Jr. C. C. 311; *Ward v. Peck*, 59 U. S. (18 How.) 467; *The Friendship*, 2 Curt. C. C. 440; *The J. B. Lunt*, 11 N. Y. Leg. Obs. 137; *The Commerce*, 66 U. S. (1 Black.) 574; *contra*, *The John Jay*, 3 Blatchf. 67.

²¹ D. C. Rule 18; *The Tilton*, 5 Mason 465; *A Floating Dry Dock*, 22 F. R. 685; *The Watchman*, Ware, 233; *The G. Reusens*, 23 F. R. 403; *The Amelia*, 2 Dod. 42; *The Warrior*, id. 288; *The G. Reusens*, 23 F. R. 403; *The Amelia*, 23 id. 406; *The Director*, 26 id. 708; *The E. J. Slaymaker*, 28 id. 767; *The Daisy*, 29 id. 300; *The Two Barges*, 46 id. 204; *The Fannie*, 8 Ben. 429; *Jervey v. The Carolina*, 66 F. R. 1013. A possessory suit may be brought by a sheriff, from whose possession a vessel has been wrongfully removed. *The Bonnie Doon*, 36 F. R. 770. But when a collector of customs refuses to issue papers to a vessel, a possessory action in admiralty will not lie though the vessel may be temporarily prevented from navigating as the result of the collector's non-action. *Brent v. Thornton*, 91 F. R. 546.

²² *The Eclipse*, 135 U. S. 599; *The Robert R. Kirkland*, 92 F. R. 407; *The Clifton*, 143 F. R. 460; *The C. C. Trowbridge*, 14 F. R. 874; *The Amelia*, 23 F. R. 406; *The Ella J. Slaymaker*, 28 F. R. 767; *Wenberg v. Phosphate*, 15 F. R. 285; *The G. Reusens*, 23 F. R. 403. But may notice an equitable title, alleged by a claimant in possession. *Chirug v. Knickerbocker S. T. Co.*, 174 F. R. 188.

²³ The owners of a ship are, generally speaking, tenants in common. *Wright v. Marshall*, 3 Daly, 331. Yet there may be a special partnership between them, in the ship, as well as in the cargo, in regard to a particular voyage or adventure. *Mumford v. Nicoll*, 20 Johns. 611.

²⁴ *Steamboat Orleans v. Phœbus*, 36 U. S. (11 Pet.) 175 at p. 183; *Willings v. Blight*, 2 Pet. Adm. 288; *The Marengo*, 1 Lowell, 52; *Coyne v. Caples*, 8 F. R. 638. As to forfeiture of such bond, see *The Cawdor*, 9 Asp. Mar. L. C. 19. For form of Bond for Safe Return, see Appendix, p.

²⁵ *Skrine v. The Hope*, Bee, 2; *Willings v. Blight*, 2 Pet. Ad. R. 288; *Stevens v. The Sandwich*, 1 id. 233; *The Orleans v. Phœbus*, 36 U. S. (11 Pet.) 175; *Story on Part.* 435, 436; *The Elizabeth and Jane*, 1 W. Rob. 278; *Conk. Treat.* 2d ed. 156; *Dunlap Prac.* 67, 69; *The Apollo*, 1 Hag. Ad. R. 306; *Coyne v. Caples*, 8 F. R. 638; *The Annie H. Smith*, 10 Ben. 110.

§ 188. Accounts and Mortgages.

The admiralty has, however, no jurisdiction in matters of account between part-owners, or others, except when the taking of an account is a mere incident to a maritime cause of action.²⁶ It has also been held that it has not jurisdiction of mortgages, in questions between the mortgagee and the owner, so as to be able to foreclose a mortgage of a vessel, by a sale, or by decreeing the ship to be the property of the mortgagees and directing the possession to be given to them.²⁷ See *post* § 261.

§ 189. Mariners. I.

The term Mariner includes all persons employed on board ships and vessels, during the voyage, to assist in their navigation and preservation, or to promote the purposes of the voyage. Masters, mates, sailors, surveyors, carpenters, coopers, stewards, cooks, cabin boys, kitchen boys, engineers, pilots, firemen, deck hands, waiters,—women as well as men,—are mariners.²⁸

§ 190. Mariners. II—Wages.

“Ships were originally invented for use and profit, to plough the seas, not to lie by the walls.”²⁹ The ship being finished and furnished, her first want is a ship’s company to navigate her. Without their strength, and knowledge, and skill, and intrepidity, she must rot at the wharf, or be hurried to destruction. The ship, that by the agency of the most uncertain, capricious, and powerful elements, moves with a certainty and a security only surpassed by the beauty of her appearance and the grace of her motion, when under the control of a well-appointed crew, becomes, in the hands of unpractised landmen, the victim of the first peril, and their efforts only urge her the sooner to inevitable destruction. The service of the ship’s company is,

²⁶ *The Orleans v. Phœbus*, 36 U. S. (11 Pet.) 175; *Grant v. Poillon*, 61 U. S. (20 How.) 162; *The Brothers*, 7 Fed. Rep. 878; *The H. E. Willard*, 52 id. 387; 53 F. R. 599; *The John E. Mulford*, 18 F. R. 455; *Dailey v. Doe*, 3 F. R. 903; *The Emma B.*, 140 F. R. 771.

²⁷ *Bogart v. The John Jay*, 58 U. S. (11 How.) 399; *Schuchardt v. Babbidge*, 60 U. S. (19 id.) 239; *The William D. Rice*, 3 Ware, 134; *contra*, *The Hilarity*, Blatchf. & H. 90; *vide*, *Leland v. The Medora*, 2 Woodb. & M. 92; *Deshon v. The Same*, id. 118; *The Clifton*, 143 F. R. 460; *The Ella J. Slaymaker*, 28 F. R. 767; *The C. C. Trowbridge*, 14 F. R. 874; *The B. F. Woolsey*, 3 F. R. 457; *The Venture*, 21 F. R. 928. *The Helys*, 173 F. R. 928.

²⁸ *Robinett v. The Exeter*, 2 Rob. 261; *Willard v. Dorr*, 3 Mason, 91; *Shaw v. The Lethe*, Bee, 424; *The Lord Hobart*, 2 Dod. 104; *Atkyns v. Burrows*, 1 Pet. Ad. 244; *The Leonidas*, Olc. 12; *vide*, *The Louisiana*, 2 Pet. Ad. 368; *Trainer v. The Superior*, Gilp. 514; *Gurney v. Crockett*, Abb. Ad. 490; *The Harriet*, Olc. 229; *Dunlap Prac.* 59; *The James H. Shrigley*, 50 F. R. 287.

²⁹ 1 Molloy, 308.

therefore, the maritime service which is entitled to the highest consideration and the greatest favor; and the jurisdiction of the admiralty in cases of mariners' wages is settled by a course of decisions of unbroken authority during centuries. The jurisdiction over such cases is firmly established in this country on principle, and all cases of mariners' wages are, *par excellence*, maritime cases, and subject to the jurisdiction of the admiralty; and this includes whaling, sealing and fishing voyages, and demands for subsistence, expenses of cure, etc., which are in the nature of wages.³⁰ The master alone may not, in this country, libel the ship for his wages, it being held that he looks to the owners and not to the ship for his security.³¹ The rule is different in England, and therefore, the English law is applied by comity, and the master of an English vessel may libel her in our courts for his wages.³²

§ 191. *Mariners. III—Public Vessels.*

The mariners of the public vessels of the nation cannot proceed against them in the admiralty, for the reason that the government or sovereign cannot be sued. It is not because the court has not jurisdiction, but because there is no right of action against the government or its property. In like manner, the mariners of a public vessel of a foreign power within our jurisdiction are not allowed to proceed against the vessel or officers. This is not because they are foreigners, but because, by the common law and universal consent of nations, the person, the ministers, and the vessels of a sovereign retain their independent character, and their consequent immunities, wherever they rightfully are, in times of peace.³³

³⁰ Dunlap Prac. 20, 24, 26; *The Sydney Cove*, 2 Dod. 11; *Wilson v. The Ohio*, Gilp. 505; *The May Queen*, Sprague, 588; *The George*, 1 Sumn. 151; *Martin v. Acker*, Blatchf. & H. 279; *Thackarey v. The Farmer*, Gilp. 524; *vide Foster v. The Pilot No. 2*, 1 Am. Law Reg. 403; Dunlap Prac. 59, 60, 61, 62; *Macomber v. Thompson*, 1 Sum. 384; *Pratt v. Thomas*, Ware, 427; *Sheppard v. Taylor*, 5 Pet. 675; *Harden v. Gordon*, 2 Mason, 541; *Plummer v. Webb*, 4 Mason, 380; *Smith v. The Pekin*, Gilp. 203. By § 4536 Rev. Stat. seaman's wages are not subject to attachment; nor are they assignable or saleable in advance, except certain advances authorized by law.

Seamen may recover, when against a foreign ship, their wages without deduction for advances which have been made to them by their consent. *Patterson v. Bark Eudora*, 190 U. S. 169.

³¹ *Drinkwater v. The Spartan*, Ware 145; *Willard v. Dorr*, 3 Mason 91; *The Grand Turk*, 1 Paine 73; *The M. Vandercook*, 24 F. R. 472.

³² *Covert v. The Wexford*, 3 F. R. 577; *The J. L. Prendergast*, 29 F. R. 127, *aff'd* 32 F. R. 415.

³³ *The Lord Hobart*, 2 Dod. 100; *Ellison v. The Bellona*, Bee, 112; *Pierre de Moitez v. The South Carolina*, *id.* 422; Dunlap Prac. 64; *The Exchange v.*

§ 192. Mariners. IV—Fishing Lays.

In the earliest periods of maritime commerce, a common form of compensating the mariner was by giving him, in one way or another, an interest in the success of the voyage. In modern times, fixed pecuniary wages have taken the place of a share of the earnings, except in the cases of whaling, fishing, and sealing voyages, in which the ancient mode of compensation still prevails. In England, before her acts restoring the admiralty jurisdiction, none but contracts in the usual form were allowed to be prosecuted in the admiralty, and a fixed rate of pecuniary wages was held to be the usual form. There cannot be a more striking illustration of the caprice and want of rational principle which characterize the prohibitions of the English common law courts.³⁴

§ 193. Mariners. V—On Foreign Ships.

There have been attempts in England and in this country, to establish an exemption in favor of the seamen of foreign merchant ships. It has been sometimes placed on the ground of the comity of nations, sometimes on the ground that there can be no jurisdiction in such cases except by the consent of the consul, or other diplomatic representative of the foreign nation to which the seamen or the vessel belongs, all of which are fallacious. There is no such comity of nations, nothing within the territory of a nation is without its jurisdiction, and no officer of a foreign government can grant or destroy the jurisdiction of our courts. Some exemptions are established by the constitution, some by treaty, and some by the established and immemorial usage of nations, and they do not apply to persons and property engaged in the ordinary pursuit of commerce. In the present state of international intercourse and commerce, all persons in time of peace have the right to resort to the tribunals of the nation where they may happen to be, for the protection of their rights. The jurisdiction of the courts over them is complete, except when it is excluded by treaty,³⁵ though sometimes, as in the case of foreign seamen, they will refuse, from considerations of expediency, to exercise

McFaddon, 11 U. S. (7 Cranch) 147; *The Pizarro v. Matthias*, 10 N. Y. Leg. Obs. 97; *Wheat. Int. Law*, 149.

³⁴ *Cleirac*, 66, 138; *The Juliana*, 2 Dod. 509; *The Fairplay*, Blatchf. & H. 136; *Duryee v. Elkins*, Abb. Ad. 529.

³⁵ *The Genesee Chief v. Fitzhugh*, 53 U. S. (12 How.) 443; *Glass v. The Betsey*, 3 U. S. (3 Dal.) 6; *Jecker v. Montgomery*, 54 U. S. (13 How.) 498; *Patch v. Marshall*, 1 Curt. C. C. R. 452; *Fairgrieve v. Marine Ins. Co.* 94 F. R. 686.

their jurisdiction,³⁶ or they may, through comity, enforce the law of the country to which the ship belongs.³⁷

§ 194. Mariners. VI—Disabled Seamen's Right to Maintenance and Cure.

From very ancient times it has been held that a sailor who has fallen ill or been injured in the service of the ship is entitled to wages, and to his maintenance and cure, at least as long as the voyage is continued, and this whether the injury was occasioned by negligence, his own or another's, or by simple accident.³⁸ Both the vessel and the owners are liable in the sailor's action to recover such maintenance and cure.³⁹ The older cases say that the seaman is entitled to be *cured* at the expense of the ship. Whether this means absolute cure, in the sense of total recovery from illness or injury, or cure in the sense of *care* during disability while the seaman remains connected with the ship, the cases do not definitely decide. The Supreme Court has not passed upon the question of the liability of the vessel and owner for maintenance and cure of the seaman after the voyage has ended, and the decisions of the lower courts are in confusion, some courts holding that the liability ends with the voyage,⁴⁰ others that it continues for a reasonable time even after the voyage is ended.⁴¹ The better, though harder, rule would seem to be that the liability of the vessel ends with the voyage and the return of the sailor to his home, or to one of the marine hospitals. Otherwise, a sailor, injured or overtaken with an incurable disease while in the service of the ship, though without fault on the part of the latter, might become a pensioner for life of the ship and her owners, which is not reasonable.

§ 195. Discretionary Exercise of Jurisdiction by Admiralty Courts.

Admiralty courts have jurisdiction of admiralty suits entirely between foreigners when proper service can be had or property attached, but it is discretionary with the court whether it will accept

³⁶ *Davis v. Leslie*, Abb. Ad. 123; and cases cited; *Willendson v. The Forsoket*, 1 Pet. Ad. R. 197; *The Infanta*, Abb. Ad. 263; *Bucker v. Klorkgeter*, id. 402; *Graham v. Hoskins*, Olc. 224; *The Napoleon*, id. 208; *The Metapedia*, Cohens Adm. Law, p. 232; *The Elwine Kreplin*, 9 Blatch. 438; *Ex parte Newman*, 87 U. S. (14 Wall.) 152; *The Wellhaven*, 55 F. R. 80.

³⁷ *The Belvedere*, 90 F. R. 106.

³⁸ *The Osceola*, 189 U. S. 158; *The Iroquois*, 194 U. S. 240; *The Fullerton*, 167 F. R. 1.

³⁹ *The Osceola*, 189 U. S. 158.

⁴⁰ *Nevitt v. Clark*, Olc. 316; *The Atlantic*, Abb. Adm. 451; *The Ben Flint*, 1 Abb. U. S. 126; *The City of Alexandria*, 17 F. R. 390; *The Tamerlane*, 47 F. R. 822; *The J. F. Card*, 43 F. R. 92.

⁴¹ *Reed v. Canfield*, 1 Summer, 195; *Brown v. Overton*, Sprague, 462; *Peter*

such jurisdiction or not.⁴² When suitable reasons for accepting jurisdiction appear, such as conveniences of obtaining evidence, or discharge of foreign seamen from a foreign vessel in an American port, or where one of the parties is an American citizen, the court will assume jurisdiction, and matters occurring on the high seas or concerning maritime affairs are properly cognizable by the court, regardless of nationality,⁴³ even though the parties have stipulated that disputes shall be settled before the courts of their own country.⁴⁴ But when a cause of action has arisen abroad and witnesses are abroad, or trial rights intervene,⁴⁵ or a foreign consul protests,⁴⁶ the court will not accept jurisdiction, unless it is necessary to prevent a failure of justice.⁴⁷ And in such cases the court will still refuse jurisdiction, *son v. The Chandos*, 4 F. R. 645; *The W. L. White*, 25 F. R. 503; *The Lizzie Frank*, 31 F. R. 477; *The Ella S. Thayer*, 40 F. R. 902; *The Troy*, 121 F. R. 901; *McCarron v. Dominion Atlantic Ry. Co.*, 134 F. R. 762.

⁴² *The Amalia*, 3 F. R. 652; *The Salomini*, 29 F. R. 534; *The Blaireau*, 2 Cranch, 240; *The Maggie Hammond*, 9 Wall. 435; *Ex parte Newman*, 14 Wall. 152; *Davis v. Leslie*, Abb. Adm. 123; *The Jerusalem*, 2 Gall. 190; *The Sailor's Bride*, Brown Ad. 68; *Boult v. The Naval Reserve*, 5 F. R. 209; *The Bee*, 1 Ware, 332; *One Hundred and Ninety-four Shawls*, Abb. Adm. 317; *Neptune S. N. Co. v. Sullivan T. Co.* 37 F. R. 159; *Wilson v. The John Ritson*, 35 F. R. 663; *Fairgrieve v. Mar. Ins. Co.*, 94 F. R. 686; *Papping v. The Sirius*, 47 F. R. 825; *The Troop*, 117 F. R. 557, *aff'd* 128 F. R. 856; *The Bound Brook*, 146 F. R. 160; *The Albani*, 169 F. R. 220.

⁴³ *The Belgenland*, 114 U. S. 355; *The Jupiter*, 1 Ben. 536; *The Russia*, 3 Ben. 471; *The City of Carlisle*, 39 F. R. 807; *The Belgenland*, 5 F. R. 86; *Chubb v. Hamburg American P. Co.*, 39 F. R. 431; *The Troop*, 118 F. R. 769; *Pouppirt v. Elder Dempster S. Co.*, 122 F. R. 983, *aff'd* on this point, 125 F. R. 732; *The Alnwick*, 132 F. R. 117; *The August Belmont*, 153 F. R. 639; *The Baker*, 157 F. R. 485.

⁴⁴ *Prince S. S. Co. v. Lehman*, 39 F. R. 704; *Slocum v. W. R. Co.*, 42 F. R. 235; *Kelley v. The Topsey*, 44 F. R. 631; *Mutual, etc., v. Cleveland, etc.*, 82 F. R. 508; *Fairgrieve v. Mar. Ins. Co.*, 94 F. R. 686; *Gough v. Hamburg, etc.*, 158 F. R. 174.

⁴⁵ *The Belgenland*, 114 U. S. 355; *The Becherdass Ambaidass*, 1 Low. 569; *The Pawashick*, 2 Low. 142; *The Bound Brook*, 146 F. R. 160; *See The Neck*, 138 F. R. 144.

⁴⁶ *Fry v. Cook*, 14 F. R. 424; *The Montapedia*, 14 F. R. 427; *The Burchard*, 42 F. R. 608; *Tracy v. The Walter D. Wallet*, 66 F. R. 1011; *The Bound Brook*, 146 F. R. 160. When an American citizen is the libellant, the court may take jurisdiction of a suit for seaman's wages against a foreign vessel, even against the protest of the consul of the foreign country, and in spite of a treaty which gives to the consul exclusive power to determine differences between captains and crews of vessels belonging to such foreign country. *The Neck*, 138 F. R. 144. So also in cases of tort, though the libellant be not an American citizen. *The Baker*, 157 F. R. 485.

⁴⁷ *The Brisk*, 4 Ben. 252; *Bernhard v. Creene*, 3 Sawy. 230; *The Napoleon*, Olc. 208; *Davis v. Leslie*, Abb. Adm. 128; *Buckner v. Klorkgeter*, id. 402; *Thompson v. The Nanny*, Bee. 217; *The Pacific*, Blatch. and H. 187; *Goldman v. Furness*, 101 F. R. 467; *The Troop*, 117 F. R. 557, *aff'd* 128 F. R. 856.

even though the cause of action be assigned to a citizen.⁴⁸ But when a citizen is libellant against a foreign ship in a suit to recover wages, a court has no right to refuse to accept jurisdiction, and, having accepted it, will incidentally determine the rights of other sailors on the same ship, though the latter are foreigners.⁴⁹ The right to object to the assumption of jurisdiction by the court in such cases will be waived by the claimant by general appearance.⁵⁰

§ 196. Material Men.

It has been heretofore remarked that the law of this country which holds that contracts for building vessels are not maritime contracts, has gone so far as to include in the building all of the outfit which goes into the vessel's original construction. For the supplies which are furnished for the original outfit of a vessel, therefore, there is here no maritime term.⁵¹

But after the ship is built and equipped and starts upon her voyage, she is in constant need of supplies for her ordinary needs, and of repairs for her extraordinary needs. These are often grouped under one word, the "necessaries" of the ship.

Necessaries for a vessel are not merely those things which are physically material and absolutely necessary to her existence or preservation, which are incorporated with her, or used on board of her; but also those which a careful and provident owner would provide, to enable her to perform well the functions which, as a maritime agent, she is destined to perform, whatever is fit and proper at the time, for the service in which the vessel is engaged. This may include money, medicines, labor and skill, personal services as well as materials. It is the present, apparent want of the vessel, not the character of the thing supplied, which makes it a necessary. Thus, anchors and cables are, in the general sense, necessaries; but if the vessel is fully supplied with them, another anchor or cable is not necessary. If it be not furnished to supply a want of the vessel, it cannot properly be called supplies. Some of the innumerable wants of a vessel, and the rulings of courts on their maritime character will be found collected in § 147, *ante*, p. 117.

Admiralty Rule 12 provides as follows:

"In all suits by material men for supplies or repairs, or other

⁴⁸ *Goldman v. Furness*, 101 F. R. 467.

⁴⁹ *Johnson v. The Karoo*, 49 F. R. 651; *The Falls of Keltie*, 114 F. R. 357.

⁵⁰ *The Ucayali*, 159 F. R. 800.

⁵¹ See *ante*, § 183.

necessaries, the libellant may proceed against the ship and freight *in rem*, or against the master or owner alone *in personam*."

There has never been any difficulty about a suit *in personam* for repairs and supplies. If the owner has ordered them, he may be sued for their value;⁵² if the master has ordered them, he becomes directly responsible and may be sued for their value, or the owner may be sued for necessaries ordered by the master, who is the duly qualified agent of the owner for that purpose.⁵³ The common law would entertain such a suit; it is nothing but an action for goods sold and delivered.

§ 197. The Maritime Lien of Material Men.

One who furnishes necessaries to or lends money for the use of a ship, looking to the ship for repayment, has, by the general maritime law, a right in the ship herself, which will enable him to cause the ship to be sold in order that he may be repaid out of the proceeds. This is the material-man's lien.⁵⁴ In the older codes of the continental countries, the idea of such a privilege or lien exists, though it may not be definitely defined. As Judge Curtis, in the *Young Mechanic*,⁵⁵ says, "Its usual formula is that the ship ought to be sold, and the debt or damage paid from its price." Under such older law, the lien was given unqualifiedly to the furnisher of necessaries, and it made no difference who he was or where or how the necessaries were ordered or furnished.⁵⁶ But early in the history of this country the Supreme Court held that where the supplies are ordered in the home port⁵⁷ of a vessel, they are customarily furnished on the personal credit of the owner, as ordinary goods are furnished, and are not furnished on the security of the ship herself; a difference existing in this respect between the case when the vessel is in the home port and the case when she is foreign to the port where the necessaries are

⁵² *The General Smith*, 4 Wheat. 438; *The Belfast*, 7 Wall. 624; *The Kalorama*, 10 Wall. 204.

⁵³ *The Lulu*, 10 Wall. 492.

⁵⁴ *The St. Lawrence*, 3 Wall. 211; *The General Smith*, 4 Wheat 488; *Peyroux v. Howard*, 7 Pet. 324; *The Virgin*, 8 Pet. 538; *The Nestor*, 1 Story 73; *The Chusan*, 2 Story 455; *Thomas v. Osborn*, 19 How. 22; *The Lulu*, 10 Wall. 192; *The Grapeshot*, 9 Wall. 129.

⁵⁵ *The Young Mechanic*, 2 Curt. 404.

⁵⁶ Dig. 14, 1, 1; 1 Valin Com. 363, 3 Kent Com. 168.

⁵⁷ The home port of a vessel does not depend upon the place where she is registered or enrolled, but is that port at or nearest to which the owner, or if there be more than one, the ship's husband or managing owner usually resides.

furnished.⁶⁰ And thus there grew up the distinction between liens on foreign and on domestic vessels, and the doctrine of presumption of credit. This has crystallized into the presently existing law, which holds that there is no lien under the general maritime law for necessities furnished to a vessel in her home port;⁶¹ that in case of supplies furnished to a vessel foreign to the port where such furnishing takes place, and in the absence therefrom of the owner, there is a presumption that the supplies were furnished on the credit of the ship, and hence there is presumptively a lien on the ship:⁶² this presumption may be overthrown by evidence that the supplies were actually furnished in reliance on other security than the ship, and in such cases no lien exists;⁶³ as, for example, if the owner is present and presumably orders the supplies. But even though the owner is present, the lien may be created by his agreement, express or implied, that there shall be a lien.⁶⁴

§ 198. The Statutory Lien of Material Men.

Many, if not all, of the states possessing navigable waters, have passed acts giving to one who furnishes supplies and materials to a vessel in her home port, a lien on the vessel for the value of such supplies. Such a lien can be enforced *in rem* in the admiralty courts only,⁶⁵ it being held that a proceeding *in rem* under a state statute in the Courts of the state is an encroachment upon the exclusive admiralty and maritime jurisdiction of the Federal Courts. We have therefore this anomalous condition of the law as to right of recovery against the vessel for necessities furnished in the vessel's home port: the vessel cannot be sued in the Federal courts under the general maritime law, for that law gives no lien: she cannot be sued in the state court, for that court is unable to enforce the lien which the state law has created: but the Federal court, sitting in admiralty, may enforce the lien given by the state, because the subject-matter of it is maritime!

⁶⁰ The General Smith, 4 Wheat. 438; The St. Jago de Cuba, 9 Wheat. 409.

⁶¹ The General Smith, 4 Wheat. 433; The Belfast, 7 Wall. 624; The Kalorama, 10 Wall. 204; The Lottawanna, 21 Wall. 558.

⁶² The Grapeshot, 9 Wall. 129; The Lulu, 10 Wall. 192; The Kalorama, 10 Wall. 204.

⁶³ The Lulu, 10 Wall. 192; The Patapsco, 13 Wall. 329.

⁶⁴ The Kalorama, 10 Wall. 204; The Valencia, 165 U. S. 264.

⁶⁵ The St. Jago de Cuba, 9 Wheat. 409; Peyroux v. Howard, 7 Pet. 324; The Belfast, 7 Wall. 624; New Jersey v. Merchants' Bank, 6 How. 344; The Moses Taylor, 4 Wall. 411; The Hine v. Trevor, 4 Wall. 555; The Kalorama, 10 Wall. 204; The Glide, 167 U. S. 606.

If the subject-matter of the contract is not maritime, a lien given therefor by a state law cannot be enforced in the admiralty.⁶⁴ The state law can impose liens only upon vessels belonging to the state, and not upon foreign vessels.⁶⁵ Whether, as in the case of a general maritime lien, credit given to the vessel must be shown in order to enforce a lien given by state law is unsettled, the Second, Sixth and Ninth Circuits holding that it must be shown,⁶⁶ and the First and Third Circuits holding otherwise.⁶⁷ What is the status of the material-man as to a lien when the supplies are ordered by a charterer who has control of the vessel under a charter requiring him to pay for supplies is unascertained.⁶⁸ And whether the lien attaches upon the order alone for the necessities, or whether it does not arise until delivery to and use by the vessel, is also doubtful.⁶⁹

The above suggestions by no means cover all of the questions arising in regard to material-men's liens, which are numerous and a discussion of which has no place in this work. The whole law upon this subject is in a state of great uncertainty, and legislation by Congress is imperatively necessary.⁷⁰

§ 199. Affreightment—Bill of Lading.

The primary and principal purpose of a ship is transporting cargo for hire. Contracts of affreightment are, therefore, within the admiralty and maritime jurisdiction. If the ship, her master and owners, do not faithfully and fully perform their contracts to carry goods or passengers, the ship is liable *in rem*, and the master and owners *in personam*, in admiralty, for the damages; and the cargo owner has his election to sue in tort or on contract.⁷¹ In the same

⁶⁴ *McMartin v. One Dredge*, 95 F. R. 832.

⁶⁵ *The Roanoke*, 189 U. S. 185.

⁶⁶ *The Samuel Marshall*, 54 F. R. 396; *Lighters No. 27, etc.*, 57 F. R. 664; *The Electron*, 74 F. R. 689; *The Golden Rod*, 151 F. R. 6.

⁶⁷ *The Iris*, 100 F. R. 104; *The Vigilant*, 151 F. R. 747.

⁶⁸ *The Valencia*, 165 U. S. 264.

⁶⁹ See *the Cabarga*, 3 Blatch. 75; *Aitcheson v. The Endless Chain Dredge*, 40 F. R. 253; *The James H. Prentice*, 36 F. R. 777; *The Vigilancia*, 58 F. R. 698.

⁷⁰ See *Confusion in the Law Relating to Materialmen's Liens on Vessels*, by Fitz-Henry Smith, Jr., of the Boston bar. *Harvard Law Review*, Vol. XXI, No. 5.

⁷¹ *The Queen of the Pacific*, 61 F. R. 213. As to suits in tort for damage to cargo, see *post*, § 228. After the cargo is laden on board, if the shipper discover that the vessel is unseaworthy, he may proceed *in rem* for breach of the contract and recovery of the cargo. *The Director*, 26 F. R. 708. And damages can be had in admiralty for failure to furnish the ship at all. *Maury v. Culliford*, 10 F. R. 388.

manner if the freight be not paid, the master and owners of the ship may proceed, in the admiralty, against the goods *in rem*, or against the party liable for the freight *in personam*, to recover the freight. All agreements for the carriage of persons or property by vessels are contracts of affreightment, and all hire or reward for the use of vessels is freight, and these agreements may be in writing or merely verbal. The written acknowledgment of the reception on board of a particular vessel, of a particular quantity or parcel of goods, to be carried to a particular place, is a bill of lading. There is a usual, but not a necessary form, of a bill of lading, and any paper, containing the substantial elements of the usual bill of lading, is a bill of lading. Shipments are often made without any bill of lading, or written evidence of the transaction, or of the liabilities of the parties, and the law and the jurisdiction is the same as if the whole were in writing.^{71a} It is the fact that the goods are shipped, and not the written acknowledgement of it, the obligation to carry them safely, and not the written contract, that creates the liability and fixes the jurisdiction of the court.⁷²

§ 200. Charters.

When a ship, or a specified portion of it, is hired out in mass for a voyage, or a portion of a voyage, for a gross sum, or so much a ton, a voyage, a month, or the like, the contract is usually called a chartering of the vessel. A charter party, strictly, is a deed in two parts divided, *charta partita*. When not under seal it is called a memorandum of a charter. When not in writing it is not properly a *charta*, but it is nevertheless, usually spoken of as a charter. The jurisdiction and the law of the American Admiralty are the same, whether the agreement be a deed, a writing, or a mere verbal agreement. It is the substance of the undertaking of the parties, and not the form of words that they use, that creates the liability and confers the jurisdiction.⁷³ The jurisdiction of the admiralty over cases of hiring

^{71a} But see section of the Harter Act (Act Feb. 13, 1893, 27 Stat. 445).

⁷² *De Lovio v. Boit*, 2 Gall. 398; *Drinkwater v. The Spartan*, Ware, 145; *The Rebecca*, id. 188; *The Phebe*, id. 263; *The Volunteer*, 1 Sumn. 551; *Certain Logs of Mahogany*, 2 id. 589; 3 Kent's Com. 220; *Brackett v. The Hercules*, Gilp. 184; *Poland v. The Spartan*, Ware, 134, 138; *Giles v. The Cynthia*, Pet. Ad. R. 203; *The Huntress*, Davies' R. 82; *The Casco*, id. 184, *The Flash*, Abb. Ad. 67; *The Gold Hunter*, Blatchf. & H. 300; *The Leonidas*, Olc. 12.

⁷³ *Raymond v. Tyson*, 58 U. S. (17 How.) 53; *The Alberto*, 24 F. R. 379; *Maury v. Culliford*, 10 F. R. 388; *The Queen of the Pacific*, 61 F. R. 213; *The Fifeshire*, 11 F. R. 743; *Lands v. Coal*, 4 F. R. 478; *The Monte A.*, 12 F. R. 331; *Dumois v. The Baracoa*, 44 F. R. 102; *Dunbar v. Weston*, 93 F. R. 472; *Haller v. Fox*, 51 F. R. 298.

of vessels, and the carriage in vessels of persons and property, is too well settled to be questioned, even when the carriage is over canals and rivers only.⁷⁴ Breaches of charter give rise to liens on vessels.⁷⁵ But there may be agreements in a charter party of a personal nature, having no relation to a maritime service, the breach of which would give no lien on the vessel and which might be altogether outside of admiralty jurisdiction.⁷⁶

§ 201. Passengers.

Contracts for the transportation of passengers and their baggage⁷⁷ are within the jurisdiction of the admiralty. There is nothing in principle to distinguish, in this respect, the transportation of human beings from that of other portions of animated nature. Men, as well as birds and beasts and fishes, have, in all ages, been objects of maritime transportation. From the earliest periods, ships, laden with soldiers, convicts, and emigrants, have traversed all the oceans and seas and other navigable waters. Naulage, nolis, from *naulum*, the *freight* or fare paid for passage on the sea in a ship, is found in the earliest books. "Passengers are those who pay *freight* for the carriage of their persons and baggage."⁷⁸ Passage money is particularly mentioned as within the admiralty jurisdiction, by Godolphin. The Consulate, in the introduction, states that here we shall find laid down the duties which the shipowner owes to *passengers* among other people, and which the passengers owe to the shipowner. "Causes, civil and maritime, which respect or concern the sea, or passage over the same," are specified in the commission of the Vice-Admiralty judges. "Passenger ships and vessels," are regulated by acts of Congress, in most important particulars, and the business of the transportation of passengers for freight is now one of the most important and lucrative branches of maritime commerce. The rights and wrongs of passengers, in various forms, have been often the subjects of suits in admiralty; and the jurisdiction is fully established.⁷⁹ As to torts in regard to passengers, see *post* §§ 231-240.

⁷⁴ *Dunbar v. Weston*, 93 F. R. 472.

⁷⁵ *The Panama*, Olc. 343; *The Oceana*, 148 F. R. 131.

⁷⁶ *Alberti v. The Virginia*, 2 Paine, 115; *The Ripon City*, 102 F. R. 176, Breach of a charter agreement to arbitrate future disputes gives no right of action. *Munson v. Straits of Dover S. S. Co.* 99 F. R. 787, *aff'd* 102 F. R. 926.

⁷⁷ *The Priscilla*, 106 F. R. 739.

⁷⁸ *Cleirac—Termes de Marine*, verb. *passagers*; *vide* the *Consulat*, 68, and the *Continental Codes*, *passim*; *Pard. Droit Com.* § 704. *The Main v. Williams* 152 U. S. p. 122.

⁷⁹ 23 Stat. at L., p. 186; *The Moses Taylor*, 71 U. S. (4 Wall.) 411; *Mar-*

§ 202. Pilotage.

Cases of pilotage are cases of admiralty and maritime jurisdiction.

The name of pilot, or steersman, is applied either to a particular officer serving on board the ship during the course of the voyage, and having the charge of the helm and of the ship's route, or to a person taken on board at a particular place, for the purpose of conducting a ship through a river, road, or channel, or from, or into port. In the first case, the pilot is merely a mariner, and his rights are precisely the same as those of any other mariner. In the second case, the nature of the service is eminently maritime, and of a character especially entitled to favor. The pilot may proceed *in rem* against the vessel, or *in personam* against the owner or master,⁸⁰ or the consignee of the vessel.⁸¹ The jurisdiction of the admiralty is fully established in this country and in England, and on the continent of Europe.⁸²

River and harbor pilotage, in English maritime affairs, is sometimes called loadmanage, from loadsman, or lodesman, a kind of pilot established for the safe conduct of ships and vessels in and out of harbors, or up and down navigable rivers.⁸³

§ 203. Towage.

A vast number of vessels, such as barges and canal boats, have no motive power of their own, and are built with the express idea that their motive power shall come from other sources. Other vessels with motive power of their own yet employ auxiliary power to hasten their progress, or to assist in working about harbors or into docks. When such power is supplied by another vessel, it constitutes towage,

shall v. Bazin, 7 N. Y. Leg. Obs. 342; Cobb v. Howard, 3 Blatchf. 524; The Pacific, 1 Blatchf. 569; The Aberfoyle, Abb. Ad. 242; Walsh v. The H. M. Wright, Newb. 494; The Stanley Dollar, 160 F. R. 911; The Admiralty has jurisdiction *in personam* of a suit founded on false representations in regard to the contract of carriage; it is doubtful whether such jurisdiction would extend to suits *in rem*. The Normannia, 62 F. R. 469; The refusal to furnish to a passenger the accommodation to which he is entitled is a marine tort. Gleason v. The Williamette Valley, 71 F. R. 712. Admiralty has jurisdiction of a libel *in rem* by a passenger for a violation of the passenger's contract in assaulting and robbing such passenger. The Western States, 151 F. R. 929, aff'd 159 F. R. 354.

⁸⁰ Ad. Rule 14.

⁸¹ Reardon v. Arkell, 59 F. R. 624.

⁸² The Anne, 1 Mason, 508; The Nelson, 6 Rob. 227; The Benjamin Franklin, id. 350; The Bee, 2 Dod. 498; Hobart v. Drohan, 10 Pet. 108; Truesdale v. Young, Abb. Ad. R. 391; Love v. Hinckley, id. 436; The Wave, Blatchf. & H. 235; Dunlap's Prac. 59; Ad. Rule 14.

⁸³ Falconer's Dictionary.

and the contract for towage is within the cognizance of the admiralty in all its features, such contract being in its nature a maritime one.⁸⁴ Breaches of the towage contract, and damages resulting from negligence in towing, i. e., towage torts, are also within the admiralty jurisdiction.⁸⁵

§ 204. Wharves.

The admiralty also has jurisdiction of suits against the owners of docks and wharves for injuries sustained by vessels by reason of the improper and unsafe condition of the berth.⁸⁶ A wharfinger does not guarantee the safety of vessels coming to his wharves, but he is bound to exercise reasonable diligence in ascertaining the condition of the berths thereat, and if there is any dangerous obstruction, to remove it or give due notice of its existence to vessels about to use the berths. At the same time the master is bound to use ordinary care and cannot carelessly run into danger.⁸⁷ The suit of a wharfinger against a vessel, however, for damages occasioned to the wharf by the vessel, is not within the jurisdiction of the admiralty, the accident being considered to have occurred upon the land.⁸⁸

§ 205. Wharfage.

During the furnishing, supplying, loading and unloading, and repairing of a vessel, it is necessary that she should lie at a wharf, dock or pier, to be most conveniently and safely accessible. The pecuniary charge in the nature of rent to which vessels are liable for the use of a dock or wharf, is called wharfage or dockage, and is the subject of admiralty jurisdiction,⁸⁹ even in the case of domestic vessels,⁹⁰ unless the wharfage was furnished on the credit of the owner and not the

⁸⁴ *The John Cuttrel*, 9 F. R. 777; *The Alabama*, 22 F. R. 449; *The Queen of the East*, 12 F. R. 165; *Kearney v. A Pile Driver*, 3 F. R. 246; *Harris v. The Erastina*, 50 F. R. 126.

⁸⁵ *Sturges v. Boyer*, 24 How. 110; *The Quickstep*, 9 Wall. 665; *The Syracuse*, 12 Wall. 167; *The Margaret*, 94 U. S. 494; *The Annie Williams*, 20 F. R. 866; *The M. J. Cummings*, 18 F. R. 178; *The Allie & Evie*, 24 F. R. 745; *The Temple Emery*, 122 F. R. 180.

⁸⁶ *Smith v. Burnett*, 173 U. S. 430.

⁸⁷ *Phil. W., etc., R. R. v. Phil., etc., St. Co.* 23 How. 209; *Smith v. Burnett*, 173 U. S. 430; *Panama R. Co. v. Napier S. Co.*, 166 U. S. 280; *Sawyer v. Oakman*, 7 Blatch. 290; *Carlton v. Franconia I. & S. Co.*, 99 Mass. 216; *Nickerson v. Tirrell*, 127 Mass. 236; *Barber v. Abendroth*, 102 N. Y. 406; *The Henry Clark v. O'Brien*, 65 F. R. 815.

⁸⁸ See *post*, § 232.

⁸⁹ *Ex parte Easton*, 95 U. S. 68.

⁹⁰ *Robinson v. The C. Vanderbilt*, 86 F. R. 785; *Braisted v. Denton*, 115 F. R. 428.

tion, and have been so considered from the earliest periods, and in all commercial nations. The necessities of commerce so often call for such loans, that cases springing out of that class of transactions abound wherever maritime commerce exists. In the civil law, and in the various maritime codes, and in the elementary writings of the most learned commentators, the law of these loans, principally known by the name of bottomry and respondentia, holds a prominent place.¹⁰⁰

§ 210. Bottomry Loans.

Bottomry loans are those in which a sum of money is loaned for a particular voyage, at maritime interest, on the security of the ship, the ship and freight, or the ship, freight, and cargo, on condition that if the voyage be performed safely, the money and interest shall be paid; and if she do not so arrive, but is lost by a peril of the sea, then that nothing shall be paid. These are within the admiralty jurisdiction.¹⁰¹ But if it be stipulated that the lender shall not incur maritime risk, the admiralty has no jurisdiction, although the loan be such that without such stipulation it would have had jurisdiction.¹⁰²

§ 211. Respondentia Bonds.

Respondentia bonds are bonds given to secure a loan, made on the cargo, instead of the ship. Loans on respondentia are also loans at maritime interest, and are secured by the goods on their safe arrival, but put both the principal and interest at risk, and give the lender no claim for any payment whatever if the goods be lost. The jurisdiction of the admiralty over them has never been denied in the courts of the United States.¹⁰³

¹⁰⁰ *The Duke of Bedford*, 2 Hag. Ad. R. 294; *The Kennersley Castle*, 3 Hag. Ad. R. 1, 7; *The Vibilia*, 1 W. Rob. 1; *The Tobago*, 5 Rob. 194; *The Packet*, 3 Mason, 255; *The Zephyr*, id. 341; *The Draco*, 2 Sum. 157; *Conard v. The Atlantic Ins. Co.*, 26 U. S. (1 Pet.) 386, 431; *The Jerusalem*, 2 Gal. 190; *De Lovio v. Boit*, id. 398; *Wilmer v. The Smilax*, 2 Pet. Ad. R. 295; *Boreal v. The Golden Rose*, Bee, 131; *Putnam v. The Polly*, id. 157; *Sloan v. The A. E. I.*, id. 250; *The Lavinia v. Barclay*, 1 Wash. 49; *Hurry v. The John and Alice*, id. 293; *The Aurora*, 14 U. S. (1 Wheat.) 96; *Murray v. Lazarus*, 1 Paine, 572; *The Mary*, id. 671; *Davis v. Child*, 3 N. Y. Leg. Obs. 147.

¹⁰¹ *The Draco*, 2 Sum. 157; *The Atlas*, 2 Hag. Ad. R. 48; *The Mary*, 1 Paine, 671; *Wilmer v. The Smilax*, 2 Pet. Ad. R. 295, note; *The Packet*, 3 Mason, 255; *The Virgin*, 33 U. S. (8 Pet.) 538; *Abbott on Ship*, 176 n. 2; *Knight v. The Attila*, Crabbe, 326; *Pet. U. S. Dig. Bottomry*; *Curtis' Dig. Bottomry*; *Ed. Ad. Jur.* 55; *O'Brien v. Miller*, 168 U. S. 287. In a suit on a bottomry bond, one who questions the right of the master to execute it should plead that fact as a defence, id.

¹⁰² *Maitland v. The Atlantic*, 1 Newb. 514.

¹⁰³ 3 Kent Com. 357; *Franklin Ins. Co. v. Lord*, 4 Mason, 248; *Conard v. The Atlantic Ins. Co.*, 26 U. S. (1 Pet.) 386; *Pet. Dig. Bottomry*.

§ 212. Master's Loans and Other Loans.

The admiralty has also jurisdiction of a loan negotiated by the master, to repair damages done to the vessel on the high seas.¹⁰⁴ But it has been held that it has not jurisdiction of a loan made in port, to enable the borrower to buy a vessel,¹⁰⁵ nor of a claim by an agent of a steamer against its owners, for the balance of an account of moneys paid to their use, for supplies, repairs, and for commissions, such transactions being held to be not maritime contracts.¹⁰⁶

§ 213. Insurance.

The contract of insurance against the perils of the sea is one that was suggested by, and sprang from the hazards peculiar to ships and vessels in the pursuits of maritime commerce. In like manner, the rights, duties, and liabilities which are its characteristics, have always been regulated by the maritime law. Indeed, the investigation of a case of marine insurance, is but an inquiry into the facts, transactions, and perils of navigation, and the application of the principles and rules of the maritime law. It has always and everywhere been considered a maritime contract, and nowhere out of England has it ever been excluded from the admiralty jurisdiction.

In the Admiralty Court of Scotland, jurisdiction of cases of marine insurance is undisputed. There went up to the House of Lords, in 1813 and 1814, eight cases of insurance, commenced and decided in the Scotch Admiralty, involving questions of unseaworthiness from bad construction and from old age, cases of concealment and false representation, cases of the right to abandon, the effect of abandonment, and of its acceptance, insurance of vessels, of freight, and of cargo. A very large portion of the masterly treatises on the maritime law of Roccus, of Cleirac, of Valin, of Emerigon, of Boulay-Paty, and Pothier, is devoted to the law of insurance, and the celebrated anonymous work, the *Guidon de la Mer*, is but a commentary on a policy of insurance, in which all the principles of the maritime law are found in the law of insurance. It is not easy to find a reason why the admiralty should have cognizance of bottomry contracts, and not of policies of insurance, both of which respect maritime risks, injuries, and losses. A bill of lading is but a policy of insurance, guaranteeing the safety of goods against all risks, except the perils of the seas, and these are covered by in-

¹⁰⁴ *Bulgin v. The Rainbow*, Bee's Ad. R. 116.

¹⁰⁵ *The Perseverance*, Blatchf. & H. 385.

¹⁰⁶ *Minturn v. Maynard*, 58 U. S. (17 How.) 477; see *White v. Proceeds of the Americus*, etc., 19 F. R. 848.

insurance. A reference to the great compilation of Pardessus, (see the index, titles "Assurance Mutuelle," and "Assurance à prime,") will discover, in the maritime codes of five-and-twenty states and cities, the law of marine insurance holding an important and unquestioned position in the maritime law of all commercial communities, from the earliest periods of insurance. It is, indeed, of all contracts, the most purely maritime.

The jurisdiction of the American admiralty on policies of insurance, was sustained by the Circuit Court, on principle, in the memorable case of *De Lovio v. Boit*, in which the admiralty jurisdiction was so fully and learnedly discussed, and again in the case of *Andrews v. The Essex Fire and Marine Insurance Company*.¹⁰⁷ It was later sustained by the Supreme Court in the case of *Ins. Co. v. Dunham*,¹⁰⁸ and cases on the subject are now of frequent occurrence.

§ 214. Consortship.

Vessels engaged in the fisheries, in wrecking, in privateering, or other maritime employment, in which association increases efficiency or security, often agree to make common cause in their enterprise. Such arrangements are agreements of consortship. They are maritime contracts, and are within the acknowledged jurisdiction of the admiralty of this country.¹⁰⁹

§ 215. Survey and Sale in Port of Distress.

The admiralty has also jurisdiction of the survey and sale of vessels and their cargoes. In cases of distress or serious injury, in which a master, in a port away from his owners, finds it impracticable to repair, refit, or proceed on his voyage, the sale of the vessel and cargo seems to be his only resort, and nothing can be more fit and proper than that the maritime courts, administering the law of the sea, and in some sort the law of nations, should be held competent to examine into the circumstances, and order a sale. The master himself cannot fail to find in such a jurisdiction a most reliable auxiliary, and to the owner and underwriter it must be a protection against fraud, improvidence, and indiscretion.¹¹⁰

¹⁰⁷ *De Lovio v. Boit*, 2 Gal. 398; *Andrews v. The Essex Fire and Marine Ins. Co.*, 3 Mason, 16; *Peele v. The Merchants Ins. Co.*, id. 27; *Hale v. The Washington Ins. Co.*, 2 Story C. C. R. 176; *The Gloucester Ins. Co. v. Younger*, 2 Curt. C. C. R. 322.

¹⁰⁸ *Insurance Co. v. Dunham*, 78 U. S. (11 Wall.) 1.

¹⁰⁹ *Andrews v. Wall*, 44 U. S. (3 How.) 568; *The Fortitudo*, 2 Dod. 72.

¹¹⁰ *The Eliza Cornish*, 26 Eng. Law and Eq. 592; *Dunlap's Ad. Prac.* 48, 49; See *post*, § 507.

§ 216. Penalties.

For the protection of its commerce, for the collection of its revenues, and for the enforcement of all the regulations of its police in navigable waters, the United States, like all other commercial nations, finds it necessary to impose penalties and forfeitures on goods afloat and on vessels, in relation to which the laws of trade, navigation, and revenue, have been violated. In a great variety of such cases, the vessels and the goods are the only things within the reach of the courts and their process. Whenever, therefore, a penalty or forfeiture is attached to a ship or vessel, or goods on board of her, it is enforced by a seizure of the thing, and the proceeding to condemn it is a suit in the District Court, in the name of the United States, or other party, in whose favor the penalty or forfeiture is imposed.

The seizures are usually made by the revenue officers, or by the commanders of armed vessels on the high seas.¹¹¹ But where only a penalty and not a forfeiture, is sought to be enforced, the suit may be brought before a seizure is had.¹¹²

§ 217. Seizures.

The Judiciary Act of 1789, sec. 9, gave to the District Courts exclusive original jurisdiction of all civil causes of admiralty and maritime jurisdiction, "including all seizures under laws of impost, navigation or trade of the United States, where the seizures are made on waters which are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas." The case of the *Eagle*,¹¹³ which followed the *Genesee Chief*,¹¹⁴ in holding that the grant of "all civil causes of admiralty and maritime jurisdiction" was sufficient in itself to convey the jurisdiction over inland waters, held that, for such reason, the words of the statute above quoted were inoperative, jurisdiction of such

Abbott on Shipping, 23; *The Fanny and Elmira*, Edward's Ad. Rep. 118; *The Warrior*, 2 Dod. 288-295; *Janney v. The Columbian Ins. Co.*, 23 U. S. (10 Wheat.) 412; *The Tilton*, 5 Mason, 465; *Dorr v. The Pacific Ins. Co.*, 20 U. S. (7 Wheat.) 581; *Post v. Jones*, 60 U. S. (19 How.) 150; *The Henry, Blatchf. & H.* 465; *The Eliza Lines*, 61 F. R. 308.

¹¹¹ *Waring v. Clarke*, 146 U. S. (5 How.) 464; Collection Act of 1799, § 70; Collection Act of 1793, § 27; *Gelston v. Hoyt*, 16 U. S. (3 Wheat.) 246; *The Ann*, 13 U. S. (9 Cranch), 289; Slave Trade Act, May 10, 1800, March 2, 1807; Piracy Act, March 3, 1819; *Bett's Prac.* 68; *The Commerce*, 66 U. S. (1 Black.) 574.

¹¹² *The Missouri*, 4 Ben. 410, 9 Blatch. 433; *The Paolina S.* 11 F. R. 171.

¹¹³ *The Eagle*, 8 Wall. 15.

¹¹⁴ *The Genesee Chief*, 12 How. 443.

seizures being conveyed by the general grant of jurisdiction over all civil causes of admiralty and maritime jurisdiction. On the revision of the statutes, therefore, the above provision was omitted entirely, the only provision which was retained being the further provision for jurisdiction of seizures in places to which the admiralty jurisdiction does not extend, which provision forms a part of Section 563, subdivision 8, of the Revised Statutes. All seizures on navigable waters under the laws of import, navigation and trade of the United States are matters of admiralty jurisdiction under the general grant of "all civil causes."¹¹⁵

§ 218. Seizures. II.

It is the place of seizure, and not the place of committing the offence, which decides the jurisdiction.¹¹⁶ If the seizure be made in a foreign jurisdiction, or on the high seas, the District Court of the district to which the property is brought has the jurisdiction.¹¹⁷ If the seizure be made within a judicial district of the United States, the District Court of that district has the jurisdiction. If the seizure be unlawful, the party has his redress by a suit *in personam* in the admiralty. The jurisdiction in this class of torts is co-extensive with the jurisdiction of the seizure, and exists whether the seizure be on the high seas, in ports and harbors, or on the lakes and rivers of the interior.

Where there has been a condemnation in a revenue case of forfeiture, an informer entitled to a share of the proceeds may institute an original suit in the admiralty to recover them.¹¹⁸ But the collec-

¹¹⁵ *Glass v. The Betsey*, 3 U. S. (3 Dallas), 6; *Yeaton v. The U. S.*, 9 U. S. (5 Cranch), 281; *Steele v. Thatcher*, Ware, 91; *Jud. Act*, § 9; *Wheelan v. The U. S.*, 11 U. S. (7 Cranch), 112; *Rose v. Himely*, 8 U. S. (4 Cranch), 241, 276; *The U. S. v. The Betsey & Charlotte*, 8 U. S. (4 Cranch), 443; *The Samuel*, 14 U. S. (1 Wheat.) 9; *Gelston v. Hoyt*, 16 U. S. (3 Wheat.) 246; *The Merino, etc.*, 22 U. S. (9 Wheat.) 391; *The U. S. v. La Vengeance*, 3 U. S. (3 Dal.) 297; *The Sarah*, 21 U. S. (8 Wheat.) 391; *The Palmyra*, 25 U. S. (12 Wheat.) 1; *The Marianna Flora*, 24 U. S. (11 Wheat.) 1; *The Ben R.*, 134 F. R. 784.

¹¹⁶ *Keene v. The U. S.*, 9 U. S. (5 Cranch), 304; *The Ann*, 13 U. S. (9 Cranch), 289; *The Sarah*, 21 U. S. (8 Wheat.) 391; *The U. S. v. The Betsey & Charlotte*, 8 U. S. (4 Cranch.) 443; *Wheelan v. The U. S.*, 11 U. S. (7 Cranch), 112; *The Merino, etc.*, 22 U. S. (9 Wheat.) 391; *U. S. v. One Raft*. 13 F. R. 796.

¹¹⁷ *The Abby*, 1 Mason, 360; *The Merino et al.*, 22 U. S. (9 Wheat.) 391; *The Margaret*, id. 421.

¹¹⁸ *Dunlap Prac.* 38, 41; *Burke v. Trevitt*, 1 Mason, 96; *Delcol v. Arnold*, 3 U. S. (3 Dallas), 333; *Colson v. Thompson*, 15 U. S. (2 Wheat.) 336; *The*

tion of duties is not a cause of admiralty and maritime jurisdiction, and a suit *in rem* to enforce the payment of duties cannot be maintained.¹¹⁹

§ 219. Ransom Bills.

Ransom bills are exclusively of admiralty cognizance. They necessarily involve the question of prize, or no prize, of the legality of the capture, and of the regularity of the commission and conduct of the captors; which questions are of admiralty cognizance alone.¹²⁰

§ 220. Prize.

Cases of prize have always been held to be within the admiralty and maritime jurisdiction of the United States, and in all forms, *in rem* and *in personam*, for condemnation, for military salvage, for restitution, and for damages, have been, from the earliest periods, entertained by the courts sitting as Courts of Admiralty.¹²¹ Jurisdiction of such cases is given to the District and Circuit Courts by Rev. Stat. § 563, sub. 8 & 9 and § 629, sub. 6.

§ 221. Spoliation.

Cases of spoliation and damage are cases of admiralty and maritime jurisdiction. These include illegal seizures, or depredations of vessels or goods afloat, embracing the civil injury called piracy, which consists in an unwarrantable violation of property, committed on the high seas. The injured party may proceed against the property, or the proceeds of the property, to recover it, or against the person of the

Eleanor, *id.* 345; *The Amiable Nancy*, 16 U. S. (3 Wheat.) 546; *Conk. Treat.*, 2d ed. 136, 139, 350, 351; *Wheelan v. The U. S.*, 11 U. S. (7 Cranch), 112; *Glass v. The Betsey*, 3 U. S. (3 Dallas), 6; *The U. S. v. La Vengeance*, *id.* 297; *The U. S. v. The Betsey & Charlotte*, 8 U. S. (4 Cranch), 443; *Yeaton v. The U. S.*, 9 U. S. (5 Cranch), 281; *The Active v. The U. S.*, 11 U. S. (7 Cranch), 100; *Westcot v. Bradford*, 4 Wash. 492.

¹¹⁹ *Three Hundred and Fifty Chests of Tea*; 25 U. S. (12 Wheat.) 486; *The Waterloo*, Blatchf. & H. 114.

¹²⁰ *The Lord Wellington*, 2 Gall. 103; *Maisonnaire v. Keating*, *id.* 325; *Girard v. Ware*, Pet. C. C. R. 142.

¹²¹ *Glass v. The Betsey*, 3 U. S. (3 Dal.) 6; *Penhallow v. Doane's Administrators*, *id.* 54; Act of June 26, 1812, § 6; *Conk. Treat.* 2d ed. 135; *Bingham v. Cabot*, 3 U. S. (3 Dal.) 19; *Brown v. The U. S.*, 12 U. S. (8 Cranch), 110, 137; *Martin v. Hunter's Lessee*, 14 U. S. (1 Wheat.) 335; *Jennings v. Carson*, 1 Pet. Ad. Dec. 1; *Fales v. Mayberry*, 1 Gal. 563; *The Alerta*, 13 U. S. (9 Cranch), 359; *The Adeline*, *id.* 244; *La Amistad De Rues*, 18 U. S. (5 Wheat.) 385; *Keen v. The Gloucester*, 2 U. S. (2 Dal.) 36; *The Admiral*, 70 U. S. (3 Wall.) 603, 611; *Union Ins. Co. v. U. S.* (6 Wall.) 759.

toil, loss of time, daring and danger of the salvors. It is also affected by any misconduct of the salvors while in possession of the property,¹⁴⁰ and if a defence of this character is set up, it should be alleged with due certainty and precision.¹⁴¹ The highest order of merit, in a pecuniary estimate, is the safe bringing in of property entirely abandoned and lost to the owner—derelict. For such a service, courts have sometimes awarded one-half of the property saved,¹⁴² but there is no hard and fast rule to that effect; and the modern tendency is to award less than one-half, even in cases of derelict.¹⁴³

Salvage cases are within the admiralty jurisdiction.¹⁴⁴

§ 225. Salvage. IV—Suits for.

Suits for salvage may be maintained *in rem* against the property saved or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed,¹⁴⁵ but not against both.¹⁴⁶ The “request” may be implied in a person for whose undoubted benefit the service is performed.¹⁴⁷ A suit *in personam* may also be brought against one who has taken the property from the possession of the salvor,¹⁴⁸ and suits may be maintained against co-salvors to recover a share of the salvage reward.¹⁴⁹ A bailee of another person’s property may also be com-

¹⁴⁰ *The Boston*, 1 Sumner 328; *The Island City*, 1 Cliff. 210, and 1 Black 121; *Harley v. Gawley*, 2 Sawy. 7; *The Sumner’s Apparel*, Brown Ad. 52; *Peisch v. Ware*, 4 Cranch 347; *The Bello Corrunes*, 6 Wheat. 152; *Freight-money of the Anastasia*, 1 Ben. 166.

¹⁴¹ *The Alexandra*, 104 F. R. 904.

¹⁴² *Vide The Josephine*, 2 Blatchf. C. C. R. 322.

¹⁴³ See *Scows 3*, 16 and 17, 50 F. R. 570, where salvors were paid one half of the proceeds of derelict property, and after the lapse of years, no claimant appeared for the other half, that also was given to the salvors. In *re Moneys in Registry of District Court*, 170 F. R. 470.

¹⁴⁴ *Dunlap’s Prac.* 57; *Abbott on Shipping*, 554; *Mason v. The Blaireau*, 6 U. S. (2 Cranch), 240; *Peisch v. Ware*, 8 U. S. (4 Cranch), 347; *The American Ins. Co. v. Canter*, 26 U. S. (1 Peters), 513; *The Amethyst*, Daves R. 20; *The Emblem*, *id.* 61; *Post v. Jones*, 60 U. S. (19 How.) 150; 8 Penn. Law Jour. 529,—a case of salvage in Wisconsin; *The Two Friends*, 1 C. Rob. 228; *Houseman v. The North Carolina*, 40 U. S. (15 Pet.) 40; *The U. S. v. Coombs*, 37 U. S. (12 Pet.) 72; *The Wave*, Blatchf. & H. 235; *The John Gilpin*, Olc. 77; *Williams v. The Jenny Lind*, Newb. 443; *The Roanoke*, 50 F. R. 574. In *The Steamship Jefferson*, 215 U. S. 130, it was held that the services of a tug in pumping water upon a steamship on fire in a dry dock, and wholly upon the land, were Salvage services.

¹⁴⁵ Ad. Rule 19.

¹⁴⁶ Ad. Rule 19; *The Sabine*, 101 U. S. 384.

¹⁴⁷ *Public Bath No. 13*, 61 F. R. 692; *U. S. v. Cornell Steamboat Co.*, 202 U. S. 184.

¹⁴⁸ *Hudson v. Whitmire*, 77 F. R. 846; *De Leon v. Leitch*, 65 F. R. 1002.

¹⁴⁹ *The Centurion*, Ware 477; *Studley v. Baker*, 2 Low. 205; *Roff v. Wass*.

pelled to pay salvage, where such bailee's negligence has placed the property in a position requiring salvage service.¹⁵⁰ But the court has not jurisdiction to enforce contributions between salvors, on petition of one after award to the others,¹⁵¹ though it may entertain an independent suit for contribution by one salvor against another.¹⁵²

§ 226. Salvage. V—Salvage Contracts.

It has been held that contracts for salvage are always within the discretion of the admiralty court, and that they may be disregarded if they appear inequitable. The Supreme Court, in the case of the *Elfrida*,¹⁵³ pointed out the error of this rule and held that salvage contracts, like other contracts, will be upheld when entered into fairly by the parties, with full knowledge of all the facts, without fraud, compulsion or duress: and while it is not necessary, in order to impugn a salvage contract, to show such duress as would require a court of law to set aside an ordinary contract, where no circumstances exist which would amount to a moral compulsion, the contract will not be held bad simply because the price agreed to be paid has turned out to be much greater than the services were actually worth.

§ 227. Salvage. VI—Liability of Government for.

Property of the United States on board of a vessel in transit from one point to another, is subject to a lien for salvage performed in saving the property, which lien may be enforced by a proceeding *in rem*, if such enforcement does not disturb the possession of the Government.¹⁵⁴ And where a proceeding *in rem* cannot be brought the Government may be sued *in personam*, either in the Court of Claims, or in the District or Circuit Court of the United States under the Tucker Act¹⁵⁵ where the amount claimed is respectively not more than \$1,000 or \$10,000.¹⁵⁶ Suits under the Tucker Act are not regarded as actions on contract, but are suits "for unliquidated damages

² *Sawy*. 389, 538; *McConnochie v. Kerr*, 9 F. R. 50; 15 *id.* 545; *The Olive Mount*, 50 F. R. 563; *McMullen v. Blackburn*, 59 F. R. 177.

¹⁵⁰ *Public Bath No. 13*, 61 F. R. 692.

¹⁵¹ *Sheldrake v. The Chatfield*, 52 F. R. 495.

¹⁵² *McMullen v. Blackburn*, 59 F. R. 177; *McConnochie v. Kerr*, 9 F. R. 50.

¹⁵³ *The Elfrida*, 172 U. S. 186.

¹⁵⁴ *The Davis*, 10 Wall. 15.

¹⁵⁵ 24 Stat. 505.

¹⁵⁶ *Gould v. U. S.*, 1 Ct. Cl. 184; *Bryan v. U. S.*, 6 Ct. Cl. 128; *McGowan v. U. S.*, 20 Ct. Cl. 147; *U. S. v. Morgan*, 99 F. R. 570; *Hartford & N. Y. T. Co. v. U. S.*, 138 F. R. 618; *Rees v. U. S.*, 134 F. R. 146; *U. S. v. Cornell Steamboat Co.*, 202 U. S. 184.

§ 231. Torts.

The Court of Admiralty has jurisdiction over the whole subject-matter of tortious damage on the high seas, or on navigable waters of the United States,¹⁶⁶ or within the waters of a foreign power;¹⁶⁷ of course on the assumption that the tort-feasor, man or vessel, afterwards comes within the jurisdiction, or has other property therein, if a person, so that proper service can be made, and power to enforce a decree can be had.

Cases of torts on the high seas, *super altum mare*, have always been held to be within the jurisdiction of the admiralty. And the jurisdiction in such cases is held to depend upon locality, embracing torts and injuries done on the sea, or on public navigable waters. It depends upon the place where the cause of action arises, and that place must be the waters which are subject to the admiralty jurisdiction.¹⁶⁸ It may, however, be doubted whether the civil jurisdiction, in cases of torts, does not depend upon the relation of the parties to a ship or vessel, embracing only those tortious violations of maritime right and duty which occur in vessels, to which the admiralty jurisdiction, in cases of contracts, applies. If one of several landsmen bathing in the sea, should assault, or imprison, or rob another, it has not been held that the admiralty would have jurisdiction of the action for the tort.¹⁶⁹

§ 232. Torts—Locality—The Dividing Line Between Admiralty and Common Law.

The modern jurisdiction of the English admiralty extends to any claim for damages done by any ship,¹⁷⁰ even though such damage

¹⁶⁶ Even though the vessel which sustained the injury was engaged at the time in rendering those waters innavigable. *Dailey v. City of New York*, 128 F. R. 796.

¹⁶⁷ *Panama R. Co. v. Napier S. S. Co.*, 166 U. S. 280. The court may decline jurisdiction of a suit wholly between foreigners, though the better opinion is that even under these circumstances the court will take cognizance of such tort, in the absence of a protest from the foreign consul. *Id.*

¹⁶⁸ *The Commerce*, 66 U. S. (1 Black), 574.

¹⁶⁹ *The Volant*, 1 W. Rob. 387; 3 Story on Const. 527, 530; *Martin v. Hunter's Lessee*, 14 U. S. (1 Wheat.) 335; *Dunlap's Ad. Prac.* 43, 49; *The Amiable Nancy*, 1 Paine, 111; *Steele v. Thatcher*, Ware, 91, 94; *The General Steam Nav. Co. v. Tonkin*, 4 Moore, 322; *The Potsdam*, 4 C. Rob. 73; *Krauskopp v. Ames*, 7 Penn. Law. Jour. 77; *The American Ins. Co. v. Johnson*, Blatchf. & H. 10; *The Martha Anne*, Olc. 18; *The Yankee v. Gallagher*, McAll, 467; *Phila. Wil., etc., R. R. Co. v. Phila. & Havre de Grace Steam Tug-boat Co.*, 64 U. S. (23 How.) 209; *Smith v. Wilson*, 31 How. Pr. 272; *Campbell v. H. Hackfeld & Co. Ltd.*, 125 F. R. 696.

¹⁷⁰ English Ad. Court Jurisdiction Act of 1861 (24 Vict. c. 10, sec. 7.)

may have taken place on land. The American courts have drawn the dividing line according to the locality where the substance and consummation of the injury has occurred. Thus, for damages caused to a pier by the collision of a vessel therewith, or where the explosion of a tug's boiler killed a person standing on a pier, or where sparks from a vessel's boiler set fire to structures on shore, or a fire originating on a vessel spread to buildings on the land, claims for the loss have been held to be not within the jurisdiction of the admiralty.¹⁷¹ Nor is a claim against a ship owner for the alleged wrongful arrest on shore of a deserting seaman within the jurisdiction.¹⁷² Nor is a claim for damages for personal injuries, sustained while the ship was in dry dock, and hence not in navigable waters.¹⁷³ Nor a claim against a ship for removing the gang-plank from the wharf, so that libellant walked overboard.¹⁷⁴ Nor a claim against a ship for negligently fastening a ladder from her side to a wharf so that libellant fell from the ship to the wharf and was injured.¹⁷⁵ But a claim for damages to a vessel by a draw-bridge or a claim against a wharfinger for cargo unloaded on the wharf but precipitated into the water by reason of the insufficiency of the wharf, are cognizable in admiralty.¹⁷⁶ In *The Blackheath*,¹⁷⁷ the Supreme Court sustained the jurisdiction in a case of the running down by a vessel of a beacon, built over the water and standing on piles driven into the bottom of the river, and hence, according to commonly accepted ideas, a part of the realty. But the court said that the jurisdiction was sustained because such a beacon was a government aid

¹⁷¹ *The Neil Cochran*, Brown's Ad. 162; *The Ottawa*, Id. 356; *The Plymouth*, 70 U. S. (3 Wall.) 20; *Ex parte Phoenix Ins. Co.*, 118 U. S. 610; *The Epsilon*, 6 Ben. 378; *The Maud Webster*, 8 Ben. 547; *The Curtis*, 37 F. R. 705; *Charleston Bridge Co. v. The John C. Sweeney*, 55 F. R. 540; *The Homer Ramsdell Transp. Co. v. Compagnie Generale Transatlantique*, 63 F. R. 845; *The Mary Garrett*, 63 F. R. 1009; *Cleveland Terminal & Valley R. Co. v. Cleveland Steamboat Co.*, 208 U. S. 316; *The Troy*, Id. 321; *Price v. The Belle of the Coast*, 66 F. R. 62; *Hermann v. Port Blakely Mill Co.*, 69 F. R. 646. In *Riley v. Phil. & R. R. Co.*, 173 F. R. 839, plaintiff's intestate was injured on a vessel in the Delaware River, and died of such injury on the following morning in a hospital on shore. It was held that the admiralty had no jurisdiction of a suit to recover damages for negligence causing the death.

¹⁷² *Bain v. Sandusky Trans. Co.*, 60 F. R. 912.

¹⁷³ *The Warfield*, 120 F. R. 847.

¹⁷⁴ *The Albion*, 123 F. R. 189.

¹⁷⁵ *The H. S. Pickands*, 42 F. R. 239. See *The Strabo*, 90 F. R. 110.

¹⁷⁶ *The City of Lincoln*, 25 F. R. 835; *The Haxby*, 94 F. R. 1016 and 95 F. R. 170; *City of Boston v. Crowley*, 38 F. R. 202; *Assante v. Charleston Bridge Co.*, 40 F. R. 765; *Hill v. Board of Freeholders*, 45 F. R. 260; *Penn. R. Co. v. Cent. R. Co.*, 59 F. R. 190; *Greenwood v. Town of Westport*, 53 F. R. 824, 60 F. R. 560; *Van Etten v. Town of Westport*, 60 F. R. 579; *Oregon City Trans. Co. v. Columbia St. Bridge Co.*, 53 F. R. 549.

¹⁷⁷ *The Blackheath*, 195 U. S. 361.

to navigation, a thing which from ancient times has been subject to the admiralty, and hence the tort was a maritime one, despite the fact that the beacon was fixed to the bottom of the river. And the court expressly intimated in that case and the subsequent case of *Cleveland Terminal and Valley R. Co. v. Cleveland Steamboat Company*,¹⁷⁸ that its decision in the *Blackheath* case was not to be taken as overruling prior decisions. The rule, therefore, still is that admiralty has not jurisdiction of claims for damage caused by a vessel to structures connected with the shore and immediately concerning commerce on land;¹⁷⁹ but with the qualification that the admiralty has jurisdiction of claims for damage by a vessel to a structure connected with the land, when such structure is immediately concerned with maritime affairs and commerce by water.¹⁸⁰

§ 233. Torts—Liability in Rem and in Personam—Respondent Superior.

It is a general rule that a ship is liable *in rem* for the results of the torts of the master and crew,¹⁸¹ and cases of personal injuries fall within this rule, though nowhere mentioned in the admiralty rules. In cases of this kind the rule of contributory negligence and the doctrine of assumption of risk exist,¹⁸² as at common law,¹⁸³ with the noteworthy qualification that they are not absolute bars to a recovery, but act to divide the damages, or in other words, to reduce the libellant's recovery.¹⁸⁴ Admiralty Rule 15 provides specifically that in case of collision, which is a maritime tort, the ship herself shall be liable, as well as the owner or the master. But the ship may not always be within reach of process and so cannot be sued. In such case the owner may be proceeded against *in personam*, for the result of a marine tort committed by the master or other servant.¹⁸⁵ And this

¹⁷⁸ *Cleveland Terminal & Valley R. Co. v. Cleveland Steamboat Co.*, 208 U. S. 316.

¹⁷⁹ *The Curtin*, 152 F. R. 588; *The Poughkeepsie*, 162 F. R. 494.

¹⁸⁰ *The Mackinaw*, 165 F. R. 351; *Bowers Hy. Dredge Co. v. Federal Contracting Co.*, 148 F. R. 290; *West v. Martin*, 47 Wash. 417, 92 Pac. 334.

¹⁸¹ *The John G. Stevens*, 170 U. S. 113; *The Anaces*, 93 F. R. 240; *The Minnetonka*, 146 F. R. 509; *Workman v. N. Y. City*, 179 U. S. 552.

¹⁸² *The Scandinavia*, 156 F. R. 403.

¹⁸³ *Jeffries v. De Hart*, 102 F. R. 765.

¹⁸⁴ *Olsen v. Flavel*, 34 F. R. 477; *The Max Morris*, 137 U. S. 1; *Explorer*, 20 F. R. 135; *The Serapis*, 49 F. R. 393; *The Wanderer*, 20 F. R. 140; *The Mabel Comeaux*, 24 F. R. 490; *The Ashbrook*, 44 F. R. 124; *The Daylesford*, 30 F. R. 633; *The Mystic*, 44 F. R. 398.

¹⁸⁵ In *Guttner v. Pacific Steam Whaling Co.*, 96 F. R. 617, the master of a whaling vessel, in conjunction with certain natives, tortiously took from an-

is true, even in cases where the vessel herself may not be attached, for some reason such as public policy, as in the case of a municipal fire boat.¹⁸⁶ The ship is not liable, in cases of such marine torts as assault and battery committed at sea, in which case Admiralty Rule 16 provides that the suit shall be *in personam* only.¹⁸⁷

§ 234. Torts—Personal Torts.

Cases of assault and battery, imprisonment, or other personal injury, or ill usage, arising between the master or officers on the one hand, and seamen or passengers on the other, are clearly within the admiralty and maritime jurisdiction when committed at sea, though not when committed on land,¹⁸⁸ even though the vessel on which the wrong occurred be a foreign vessel.¹⁸⁹ The shipowner is liable for the act of the master in abducting and sailing away with persons who come to labor on the vessel at the wharf.¹⁹⁰ The admiralty entertains jurisdiction of personal torts committed by the master or employees of a ship, on a passenger, whether by direct force, as trespasses, or by consequential injuries.¹⁹¹ The contract of passengers with the master is not for mere ship-room and personal existence on board, but for reasonable food, comforts, necessities, and kindness. In respect to females, it preceeds yet further, and includes an implied stipulation against obscenity, immorality, and a wanton disregard of the feelings. A course of conduct oppressive and malicious in these particulars will be punished by the court, as well as personal assaults. By the 16th rule of the Supreme Court, it is provided, that in all suits for assault and battery, or beating, the suit must be *in personam* only,¹⁹² and a suit *in rem* will not lie, where the action is technically for the assault and battery, as a mere tort, but if the action be brought on the contract, as for not carrying a passenger safely and without injury, or for not treating with proper consideration a passenger or seaman,

other vessel stores and gear, some of which he used for his own vessel and some of which went to the natives. It was held that his owner was liable but only for the portion of the property so taken by the master which was appropriated to the use of his vessel.

¹⁸⁶ *Workman v. New York City*, 179 U. S. 552.

¹⁸⁷ *The Lyman D. Foster*, 85 F. R. 987.

¹⁸⁸ *Bain v. Sandusky Trans. Co.*, 60 F. R. 912.

¹⁸⁹ *Bolden v. Jensen*, 70 F. R. 505.

¹⁹⁰ *The State of Missouri*, 76 F. R. 376.

¹⁹¹ *The Aberfoyle*, Abb. Adm. 242; *The Moses Taylor*, 17 U. S. (4 Wall.) 411; *The Normannia*, 62 F. R. 469; *The Willamette Valley*, 71 F. R. 712; *The Western States*, 151 F. R. 929, 159 id. 354; *The Minnetonka*, 146 F. R. 509.

¹⁹² See *The Sallie Tow*, 153 F. R. 659.

an assault being the gravamen of the breach, the suit may be *in rem* against the vessel.¹⁹³ An assault by a master upon a stowaway, viz., a trespasser having no contractual right on board the vessel, will give no right of action *in rem*.¹⁹⁴

Causes of action for mere personal torts are not regarded in admiralty as surviving the death of the person injured.¹⁹⁵ And the admiralty will not entertain jurisdiction of a suit for merely nominal damages.¹⁹⁶

§ 235. Death Negligently Caused. I—Right of Recovery under General Maritime Law.

Under the general maritime law, there is no right of recovery for negligence resulting in death on the high seas or upon navigable waters.¹⁹⁷ The right of action dies with the person and his representatives have no remedy against the individual or the thing which caused his death. This, as is well known, is also the rule of the common law. The common law of England on this point was changed in 1840 by the statute known as Lord Campbell's Act,¹⁹⁸ which gives a civil remedy for death negligently caused. All of the American states have passed statutes of a more or less similar nature, each of which, of course, is effective within the limits of the state which made it. Congress has never enacted a law to govern similar torts, and the admiralty and maritime jurisdictions in such matters is controlled by the general maritime law, except as affected by the statutes of a state.

§ 236. Death Negligently Caused. II—Within State Boundaries.

Within the boundaries of a state, upon the public navigable waters of the United States, a state statute is effective in admiralty, and

¹⁹³ *The Western States*, 151 F. R. 929, aff'd 159 F. R. 354.

¹⁹⁴ *The Miami*, 78 F. R. 818.

¹⁹⁵ Unless in a suit for personal injuries where the plaintiff dies: in such case it has been held that the suit may be continued by plaintiff's personal representative, and that a bond given in such suit would not be canceled by her death. *The City of Belfast*, 135 F. R. 208. But in this case the cause of action has changed, and the original cause has certainly abated.

¹⁹⁶ *Barnett v. Luther*, 1 Curt. C. C. 434; *The Harrisburg*, 119 U. S. 199; *The Alaska*, 130 U. S. 201; *Holmes v. R. Co.*, 5 F. R. 201; *The Asiatic Prince*, 97 F. R. 343; *Munson v. Straits of Dover S. S. Co.*, 99 F. R. 787, aff'd 102 F. R. 926; *In re California Nav. & I. Co.*, 110 F. R. 670.

¹⁹⁷ *The Harrisburg*, 119 U. S. 199; *The Alaska*, 130 U. S. 201; *Butler v. Boston S. S. Co.*, 130 U. S. 527; *The Corsair*, 145 U. S. 335; *La Bourgogne*, 210 U. S. 95.

¹⁹⁸ 9 and 10 Vict. Ch. 93.

may be made the foundation of a suit *in personam* against the wrongdoer to recover damages for a death negligently caused when the nature of the tort is maritime;¹⁹⁹ a right of action *in rem* exists when the state statute provides for a lien,²⁰⁰ but not otherwise.²⁰¹

§ 237. Death Negligently Caused. III—High Seas—Limitation of Liability Proceedings.

It is also settled that when death has occurred upon the high seas by reason of a maritime tort, and a statute of the state or the foreign country to which the vessel belongs gives a right of recovery for death caused by negligence, and the proceeding before the court is a limitation of liability proceeding instituted by the shipowner, the court, in distributing the funds, will recognize the claim for damages occasioned by the death.²⁰²

§ 238. Death Negligently Caused. IV—High Seas—Actions in Personam and in Rem.

It has not been definitely settled by the Supreme Court whether, in a direct suit for the recovery of damages resulting in death, occasioned on the high seas by the negligence of a shipowner, his ship or his employees, and a statute of the state or country to which the ship belongs, grants a right of action for death by negligence, a recovery can be had in the admiralty, either *in personam* or *in rem*, nor apparently has the exact point been decided by any of the inferior courts.

§ 239. Death Negligently Caused. V—High Seas—Right to Recover in Personam and in Rem.

The decisions, however, both of the Supreme Court and certain lower courts foreshadow the fact that in such cases the right of recovery will be sustained both *in personam* and *in rem* when the exact point is presented to the court of last resort. In *International Navigation Co. v. Lindstrom*,²⁰³ which was a case of death on the

¹⁹⁹ *The City of Norwalk* (*McCullough v. N. Y. & N. S. Co.*) 55 F. R. 98, *aff'd* 61, *id.* 364; *Robinson v. D. & C. Steam Nav. Co.*, 73 F. R. 883; *Middleton v. La Compagnie, etc.*, 100 F. R. 866.

²⁰⁰ *The Premier*, 59 F. R. 797; *The Oregon*, 73 F. R. 846; *The Glendale*, 77 F. R. 906, and 81 F. R. 633; *The Aurora*, 163 F. R. 633.

²⁰¹ *The Corsair*, 145 U. S. 335; *The Onoko*, 107 F. R. 984; *The Mariska*, 107 F. R. 989; *The Sylvan Glen*, 9 F. R. 335; See *Fisher v. Boutelle*, 162 F. R. 994.

²⁰² *The Hamilton*, 207 U. S. 398; *La Bourgogne*, 210 U. S. 95.

²⁰³ *International Nav. Co. v. Lindstrom*, 123 F. R. 475.

high seas, the Circuit Court of Appeals for the Second Circuit held that the state statute was effective upon the vessel of the state when the latter was upon the high seas. That was a case at common law, but, if the tort is a maritime one, the admiralty has similar jurisdiction. In the case of *The Hamilton*,²⁰⁴ the Supreme Court said that where the state law creates a personal liability, the admiralty will of course not disregard it, but will respect the right under the state law, when brought before it in a proper way.

In *Fisher v. Boutelle*,²⁰⁵ the District Court for the Eastern District of Pennsylvania recognized the right of action *in personam* for a negligent death on the high seas, though the remedy in that particular case was denied. And if the right exists to proceed *in personam* under a state statute for a death occurring on the high seas, there seems to be no reason why the right to proceed *in rem* should not likewise exist, if the statute gives a lien. If the statute can be recognized and applied in a case *in personam* it is a familiar rule that all the provisions of the statute are applied, and if there is a provision for a lien, why should that not be applied? It is also a familiar rule that in distributing a fund, an admiralty court will not recognize a general creditor of the shipowner, but will distribute only between owner and lien holders.²⁰⁶ In admitting the claims of death claimants in the *Hamilton* and *La Bourgogne* cases,^{206a} the Supreme Court recognized the fact that they were claimants by virtue of lien. If lien holders for purposes of distribution, why not for all purposes, even to the bringing of an independent suit *in rem*?

§ 240. Death Negligently Caused, VI—Provisions of State Statutes.

A suit in admiralty to recover damages for death, brought by virtue of a state statute, is governed by the provisions of the statute on which the right of action rests;²⁰⁷ *e. g.*, the provisions of the statute regulating the time within which such suit must be brought. The same general principles apply to such a suit as to a corresponding action at common law; except that contributory negligence of the

²⁰⁴ *The Hamilton*, 207 U. S. 398.

²⁰⁵ *Fisher v. Boutelle*, 162 F. R. 994.

²⁰⁶ *The Edith*, 94 U. S. 518; *The Lydia A. Harvey*, 84 F. R. 1000; *The Wyoming*, 37 F. R. 543; *The Balize*, 52 F. R. 414.

^{206a} *Supra*, note 202.

²⁰⁷ *Stern v. La Comp. Gen. Trans.*, 110 F. R. 996; *The A. W. Thompson*, 39 F. R. 115; *Robinson v. D. & C. Steam Nav. Co.*, 73 F. R. 883; *Williams v. Quebec S. S. Co.*, 126 F. R. 591. See *The Edith*, 94 U. S. 518; *International Nav. Co. v. Lindstrom*, 123 F. R. 475; *Jeffries v. De Hart*, 102 F. R. 765.

deceased does not necessarily bar the suit,²⁰⁸ but will prevent the libellant from recovering more than half damages.²⁰⁹

§ 241. Death Negligently Caused. VII—Act of Congress Needed.

The whole present theory of the right of recovery in admiralty for a death caused by negligence upon the high seas is artificial, and each step has to be carried to the Supreme Court before it can be said that it is right. The principle of working out a jurisdiction in the admiralty by means of the statute of a state, which state at the time of the adoption of the constitution surrendered its admiralty jurisdiction to the Federal government, is strained and laborious. And yet the necessity for a recovery of compensation for the greatest damage that can be inflicted, even when that damage has occurred on the sea, is so apparent in these days that it may be said to be demanded by popular sentiment. Sooner or later Congress will pass an act similar to Lord Campbell's Act, by which a direct liability will be created in a shipowner and his ship for the results of negligence upon the high seas, even if that negligence result in death, and the winding path which at present leads to a recovery will be straightened.

§ 242. Collision.

Cases of collision of vessels are cases of admiralty and maritime jurisdiction.

The jurisdiction may now be considered as fully settled in all cases on navigable waters, as well on the lakes, rivers and canals and within ports, harbors, and counties, as on the open sea.²¹⁰ And the suit *in rem* may be brought in any district where the offending thing may be found, and *in personam* where the defendant resides,²¹¹ or where his property may be attached to compel an appearance.²¹²

²⁰⁸ See *The A. W. Thompson*, 39 F. R. 115; *Robinson v. D. & C. Steam Nav. Co.*, 73 F. R. 883.

²⁰⁹ *The Max Morris*, 137 U. S. 1.

²¹⁰ Ad. Rule 15; *The Woodrop Sims*, 2 Dod. 83; *The Dundee*, 1 Hag. Ad. R. 109; *Reeves v. The Constitution*, Gilp. 579; *Strout v. Foster*, 42 U. S. (1 How.) 89; *The Celt*, 3 Hag. Ad. R. 321; *Waring v. Clarke*, 46 U. S. (5 How.) 441; *The Leopard*, Davis' R. 193; *The Scioto*, id. 359; *The Lotty*, Olc. 329; *Jackson v. The Magnolia*, 61 U. S. (20 How.) 296; *Nelson v. Leland*, 63 U. S. (22 How.) 48; *The Commerce*, 66 U. S. (1 Black.) 574; *Town v. The Western Metropolis*, 28 How. Pr. 283; *Ex parte Boyer*, 109 U. S. 629.

²¹¹ *The Commerce*, 66 U. S. (1 Black.) 574; *Nelson v. Leland*, 63 U. S. (22 How.) 48.

²¹² *Dyer v. The Nat. S. S. Co.*, (*The Scotland*), 105 U. S. 24.

§ 243. Collision, What is.

The word collision, in its ordinary admiralty significance, means the striking together of two vessels. But it is used also in a broader, or looser sense of the striking together of a vessel and some other object.²¹³ And the admiralty will in some cases take jurisdiction of such accidents.

§ 244. Limitation of Liability.

Proceedings by owners of vessels to limit their liability as such to the value of their interest in the vessel and freight, are also cases of admiralty and maritime jurisdiction. A subsequent chapter has been devoted to these proceedings. See *post*, § 518 *et seq.*

²¹³ See *Western Transit Co. v. Brown*, 152 F. R. 476; *Newtown Creek Towing Co. v. Aetna Ins. Co.*, 163 N. Y. 114.

CHAPTER XVIII.

ADMIRALTY PRACTICE—THE ORGANIZATION OF THE COURTS.

§ 245. Practice.

Practice is the means by which justice is administered. And as the first step in providing for the administration of justice is the creation of courts of justice, so the last step is the exercise of the powers of the court in executing its judgments. Thus the whole of what is usually denominated admiralty practice, is the organization and jurisdiction of the admiralty courts, their forms, modes, and rules of procedure, and the duties and responsibilities of their various functionaries.

§ 246. Admiralty Courts.

The only courts of the United States, except the courts in the territories, are the District Courts, the Circuit Courts, the Circuit Courts of Appeals, the Supreme Court, and the Court of Claims. Each of them, except the Circuit Courts and the Court of Claims, has admiralty jurisdiction in certain cases. There are no courts of the United States which are exclusively admiralty courts.

§ 247. The Territorial Courts.

There are at present five territories of the United States, Arizona, New Mexico, Alaska, Hawaii and Porto Rico. In each of the three last named there is a district court, possessing the same civil and criminal jurisdiction which is possessed by both the District and Circuit Courts of the United States.¹

§ 248. The District Court. I.

The United States, exclusive of the territories, were originally divided into as many districts as there were states, each state consti-

¹ *Alaska*—Act of May 17, 1884, sec. 3 (23 Stat. p. 24); See *Ex parte Cooper*, 143 U. S. 472; *Hawaii*—Act of April 30, 1900, sec. 86 (31 Stat. p. 158; *Porto Rico*—Act of April 12, 1900, sec. 34 (31 Stat. p. 84). The admiralty practice of Arizona and New Mexico being negligible, the acts creating the courts of the last three territories only are referred to.

tuting a district. The great increase in population and business of some of the states, has made it necessary to divide them into two or more districts. In each of these districts is a court called a District Court, formerly each held by a single District Judge, but now, in the busier districts, held by several District Judges of equal rank.

It is to the admiralty jurisdiction of the District Court that the previous pages of this work have been devoted.

§ 249. The District Court. II.

The District Courts have exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction. The jurisdiction extends to all navigable waters.²

§ 250. The District Judge.

Each judge of the District Court must reside within the district for which he is appointed, and stated terms of the court are required to be held at such times and places as are established by law. The stated terms in the Southern District of New York are held on the first Tuesday of every month. The district judge is also authorized to hold special courts at his discretion, at such place in his district as the nature of the business and the discretion of the judge shall direct. The character of maritime causes, and the necessities and occupations of many of the persons engaged in maritime transactions, and whose presence as parties or witnesses is often necessary to the administration of justice, renders delay, in many cases, equivalent to a denial of justice. It is with a view to speedy justice, that this power to hold special courts has been conferred. As the court is always open, and, wherever the judge is, there is a court, it is the practice to enter all orders in causes, in the vacation of the usual terms, as of a special term held on the day of entering the order.

§ 251. Disability or Death of the Judge.

In case of the inability of the judge of any District Court to attend on the day appointed for holding a District Court, such court may, by virtue of a written order from the judge thereof, directed to the marshal of the district, be adjourned by the marshal to the next stated term of said court, or to such day prior thereto as in the said order shall be appointed. And in case of the death of the said judge, all process, pleadings and proceedings are continued of course, until the next stated session after the appointment and acceptance of the

² Rev. Stat. § 563, subd. 8; *The Eagle*, 75 U. S. (8 Wall.) 15.

office by his successor.³ In case of the disability of the district judge to perform the duties of his office, the cases before him are transferred to the Circuit Court, as is more fully stated below. The foregoing provisions refer, of course, to the case where there is a single judge for the district. Where there are more, the other judges would take the place of the judge disabled or dead.

§ 252. The Circuit Court.

A prescribed number of districts, varying with the growth of the country, constitute a circuit, and in every district of said circuit is held a Circuit Court, composed of three or four judges, viz., the justice of the Supreme Court assigned to the circuit for the time being, the circuit judges of the circuit, and the district judge or judges of the district. Either one or more of the judges may hold the Circuit Court in all cases. The Circuit judge must reside in his circuit, by the provision of Rev. Stat. § 607.

§ 253. Disability of District Judge.

In case of the disability of the single district judge to perform his duties, the business may be transferred to the Circuit Court, by virtue of the "Act further to amend the judicial system of the United States," passed March 2, 1809, now §§ 587, 588 and 590 of the Revised Statutes.

Since the creation of the Circuit Courts of Appeals, the only way in which admiralty cases may come before the Circuit Courts is under these sections and under Rev. Stat. § 601, which provides for the hearing by the Circuit Court of a cause in which the district judge is interested.

When the business of the District Court is so transferred to the Circuit Court, the Clerk of the District Court, by § 590 of the Revised Statutes, may be authorized, by order of the Circuit judge, to take all examinations and depositions of witnesses, and make all necessary rules and orders preparatory to the final hearing of all causes of admiralty jurisdiction.

This order is entered at length in the minutes of the District Court, and in pursuance of it, the clerk, at the regular term of the court, calls the causes of admiralty and maritime jurisdiction, in their order on the docket or calendar of causes, and performs all the functions of the judge in such causes, except to hear the arguments and decide the cause. He takes down the testimony in writing, upon which, after hearing the parties, the Circuit judge decides.

³ *Ex parte The U. S.*, 1 Gal. 238; Rev. Stat. §§ 583, 602.

§ 254. Where the Judge is interested.

In all suits and actions in any District Court of the United States, in which it shall appear that the judge of such court is anyways concerned in interest, or has been of counsel for either party, or is so related to or connected with either party as to render it improper for him, in his opinion, to sit on the trial of such suit or action, it shall be the duty of such judge, on application of either party, to cause the fact to be entered on the records of the court; and, also, an order that an authenticated copy thereof, with all the proceedings in such suit or action, shall be forthwith certified to the next Circuit Court of the district; and if there be no Circuit Court in such district, to the next Circuit Court in the state; and if there be no Circuit Court in such state, to the most convenient Circuit Court in an adjoining state; which Circuit Court shall, upon such record being filed with the clerk take cognizance thereof in the like manner as if such suit or action had been originally commenced in that court, and shall proceed to hear and determine the same accordingly,⁴ and the jurisdiction of such Circuit Court shall extend to all such cases so removed as were cognizable in the District Court from which the same was removed.

§ 255. The Circuit Court of Appeals.

The Circuit Court of Appeals is composed of three judges, two of whom constitute a quorum. The chief justice and the associate justice of the Supreme Court assigned to each circuit, and the circuit judges and district judges within the circuit are competent to sit in the Circuit Court of Appeals for the circuit. The Circuit Court of Appeals has jurisdiction to review by appeal all decrees in admiralty cases made in the District Courts within the circuit, except in such cases as may be taken directly to the Supreme Court, as to which see *post*, § 562.

In admiralty cases which may be taken to the Circuit Court of Appeals for review, its decision is final, except in certain cases involving jurisdiction and except that the Supreme Court may by certiorari call the case up before it for its decision, and the Circuit Court of Appeals may certify to the Supreme Court any question or proposition of law as to which it desires the instruction of the Supreme Court.⁵

§ 256. The Supreme Court.

The Supreme Court of the United States consists of a chief justice

⁴ Rev. Stat. §§ 601, 607.

⁵ Act of March 3, 1891; 26 Stat. at Large, ch. 517.

and eight associate justices. It has exclusively all such jurisdiction of all civil suits in admiralty, suits against ambassadors or other public ministers, or their domestics, or domestic servants, as a court of law can have, consistently with the law of nations; and also of all civil suits in admiralty where a state is a party, except suits between a state and its citizens, or citizens of other states, or aliens.⁶

It has also original, but not exclusive, jurisdiction of civil suits in admiralty, between a state and citizens of other states, or aliens, and suits brought by ambassadors, or other public ministers, or in which a consul, or vice-consul, is a party.⁶

The Supreme Court has also power to issue writs of prohibition and mandamus to the District Courts, when the latter are proceeding as courts of admiralty and maritime jurisdiction.⁷

The Supreme Court has jurisdiction on appeal to review the decisions of the District Courts in admiralty cases which are excepted from the appellate jurisdiction of the Circuit Court of Appeals, as to which see *post*, § 562. The right to such appeal is not affected by the amount involved in the causes.

The Supreme Court has also the power by certiorari or otherwise to require any case, in which the decision of the Circuit Court of Appeals is made final, to be certified to it for review and determination, with the same power, as if it had come before the Supreme Court by appeal.

§ 257. The Judges' Oath.

The judges of all these courts are appointed by the President of the United States, by and with the advice and consent of the Senate, to hold for life or during good behavior. Before they proceed to execute the duties of their respective offices, they must take an oath or affirmation that they will administer justice without respect to persons, and will do equal right to the poor and to the rich; and will faithfully and impartially discharge and perform all the duties incumbent on them as judges, etc., according to the best of their abilities and understanding, agreeably to the constitution and laws of the United States.⁸

§ 258. Commissions of the Judges.

Their commissions are issued from the Department of State, and are simple appointments to the office, without any enumeration of

⁶ U. S. Const. Art. III, sec. 2, cl. 2; Rev. Stat. § 687.

⁷ Rev. Stat. § 688; *The U. S. v. Peters*, 3 U. S. (3 Dal.) 121.

⁸ Const. Art. 2, § 2, Art. 3, § 1; Rev. Stat. § 712.

duties, or grant of powers or privileges. Their commissions give the office, and it is to the laws of Congress alone that they are to look for their duties, their powers, and their privileges.

The commission of the judge of the District Court is usually inserted at length in the minutes of the court, on the day of his taking his seat on the bench, in accordance with an order therefor, entered by him at the time.

The justice of the Supreme Court and the judge of the District Court have no independent commissions as judges of the Circuit Court or Circuit Court of Appeals. .

§ 259. The Court always the Same Court.

There is no separate commission of the judge nor constitution of the court in admiralty cases. When sitting to try an admiralty cause, the court is an admiralty court, and when sitting to try a criminal, it is a criminal court; and it is the same court, though held by different judges; and the court passes from the trial of an admiralty cause to a common law cause, and *vice versa*, and becomes alternately, at the same sitting, according to the nature of the cause on trial, an admiralty court, an equity court, and a common law court of civil or criminal jurisdiction, without any change of style, form, officers, or records, except that each case is conducted according to the established course of proceedings appropriate to its class. It is thus always the same court, whether acting in one class of causes or another. It is only as an admiralty court that it is here considered.

The judges are not allowed to exercise the profession or employment of counsel or attorney, nor to be engaged in the practice of the law.⁹

§ 260. Power to issue Necessary Writs.

All these courts have power to issue all writs which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. They have also power to adopt seals, to impose and administer all necessary oaths or affirmations, and to punish, by fine or imprisonment, at the discretion of the court, all contempts of authority in any cause or hearing before the court. Also, to make and establish all necessary rules for the orderly conduct of business in said courts, provided such rules are not repugnant to the laws of the United States.¹⁰

⁹ Rev. Stat. § 713; *The Jonquille*, 19 U. S. (6 Wheat.) 452; *Jennings v. Carson*, 8 U. S. (4 Cranch) 2.

¹⁰ Rev. Stat. § 717, *et seq.*; *The U. S. v. Hudson*, 11 U. S. (7 Cranch), 32.

§ 261. Admiralty Jurisdiction, Equitable and Legal.

In the exercise of its appropriate jurisdiction, the court of admiralty exercises equitable, as well as legal jurisdiction. If the subject be of a maritime nature, and so within the power of the court, and be of such a nature that the relief must be in the nature of equitable relief, the court is entirely competent to give the equitable, as well as the legal relief. It has the capacity of a court of law, and, in certain respects, the capacity of a court of equity. In its decisions upon the ultimate rights of parties, from considerations of conscience, justice and humanity, it sometimes mitigates the severity of contracts, and moderates exorbitant demands.¹¹ The nature of maritime controversies, however, necessarily excludes from courts of admiralty, large classes of cases, such as specific performance, trusts, etc., which are of frequent occurrence in courts of equity.¹² And the court of admiralty is not a court of general equity, nor has it the characteristic powers of a court of equity.¹³ It has no power to reform an instrument,¹⁴ nor to issue an injunction,¹⁵ nor to take cognizance of a mutual mistake,¹⁶ nor to relieve against a hard contract,¹⁷ unless such matters are brought before it as subsidiary to matters of which it has undoubted jurisdiction,¹⁸ nor to investigate the conduct of arbitrators.¹⁹ But it is bound, by its nature and constitution, to determine the cases submitted to its cognizance upon equitable principles, and according to the rules of natural justice. It cannot, in a technical sense, be called a court of equity. It is rather a court of *justice*.²⁰

¹¹ Edw. Ad. Jur. 31, 138, 173; *The Orleans v. Phœbus*, 36 U. S. (11 Pet.) 175; *Macomber v. Thompson*, 1 Sum. 384; *Brown v. Lull*, 2 id. 443; *Drummond's Administrators v. Magruder & Co.'s Trustees*, 13 U. S. (9 Cranch), 125; *The Hiram*, 14 U. S. (1 Wheat.) 440; *The Fortitudo*, 2 Dod. 58; *The Minerva*, 1 Hag. Ad. R. 357; *The Cognac*, 2 id. 377; *Ellison v. The Bellona*, Bee, 106; *The Virgin*, 33 U. S. (8 Pet.) 538.

¹² *Davis v. Child*, Daveis, 71; S. C. 3 N. Y. Leg. Obs. 147; *Kynock v. The Ives*, Newb. 205; *The Larch*, 2 Curt. C. C. 427; *Kellum v. Emerson*, id. 79; *The Perseverance*, Blatchf. & H. 385; *The G. Reusens*, 23 F. R. 403.

¹³ *The Steamer Eclipse*, 135 U. S. 599.

¹⁴ *Williams v. Ins. Co.*, 56 F. R. 159.

¹⁵ *Paterson v. Dakin*, 31 F. R. 682: this remark of course does not apply to injunctions in limitation of liability proceedings.

¹⁶ *Meyer v. Pacific Mail S. S. Co.*, 58 F. R. 923.

¹⁷ *The Sappho*, 89 F. R. 366. The cases which held that admiralty could relieve against a hard salvage contract are overruled by *The Elfrida*, 172 U. S. 186.

¹⁸ *Ante*, § 188; *Keyser v. Blue Star S. S. Co.*, 91 F. R. 267; *The Emma B.*, 140 F. R. 771.

¹⁹ *The Union*, 20 F. R. 539.

²⁰ *The Harriet*, 1 W. Rob. 192; *The Jacob*, 4 Rob. 250; *The Nelson*, 6 Rob.

§ 262. Instance, Criminal and Prize Courts.

The District Courts, in the exercise of their admiralty jurisdiction, have three great classes of functions.

They are *Instance Courts*, in which are heard and determined civil suits of a maritime character between party and party.

They are *Criminal Courts*, in which are tried and punished those maritime offences of which the acts of Congress have given them jurisdiction.

They are *Prize Courts*, in which are adjudicated all the various admiralty and maritime questions relating to maritime prizes of war.

As instance courts and prize courts, all causes are heard and determined by the court alone, without the aid of a jury. As criminal courts, they administer justice in admiralty cases with the aid of a grand jury and a petit jury, like the common-law courts of criminal jurisdiction.

§ 263. The Clerk. I.

Each District Court (as well as the Supreme Court, the Circuit Court of Appeals, and the Circuit Courts), has power to appoint its clerk, who must not be related to the judge appointing him by affinity or consanguinity within the degree of first cousin.²¹ It is the court, not the judge or judges, that has the power of appointment, and the appointment is, in the first instance, properly made by the judge or judges, by a written certificate of appointment. The appointment should always be formally made by an order of the court, and duly entered in the minutes. Each clerk, before entering upon the execution of his office, must take an oath that he will truly and faithfully enter and record all the orders, decrees, judgments and proceedings of the said court; and that he will faithfully and impartially discharge and perform all the duties of his said office, according to the best of his ability and understanding.

The clerk must also give a bond to the United States with sufficient sureties, (to be approved by the court,) and in a sum to be fixed by the court, faithfully to discharge the duties of his office, and seasonably to record the decrees, judgments, and determinations of the court.²²

227; *The Saracen*, 6 Moore, 74; *The Juliana*, 2 Dod. 521; Coote's Prac. 8, 9; *The Trident*, 1 W. Rob. 35; *Andrews v. The Essex Fire & Marine Ins. Co.*, 3 Mason, 16.

²¹ Act of March 3, 1887, 24 Stat. p. 555.

²² Rev. Stat. §§ 794, 795.

§ 264. The Clerk. II.

It is the duty of the clerk in admiralty cases, to perform all those services which are usually performed by clerks of courts—to receive and mark its files, to keep and affix its seal, to issue its processes, to keep its minutes of proceedings and its records and to administer oaths, take bail, etc., in court,—being in all these matters, the servant of the court whose power he aids. He has authority by statute, to take bail and depositions in certain cases, and to perform various duties in case of the inability of the judge, as has been before stated; and he keeps the account of the moneys deposited in court. He is bound, at every stated session of the court, to present an account to the court of all the moneys remaining therein subject to its order, stating particularly on account of what causes said moneys are deposited, which account, with the vouchers, must be filed.²³ He may be attached for contempt if he refuse or neglect to obey the orders of the court for depositing such moneys, and he may have an attachment against a party for the nonpayment of his fees.²⁴

§ 265. The Admiralty Register.

In the Southern and Eastern Districts of New York, the clerk keeps, as one of the books of the court, an Admiralty Register, in which, as soon as the libel is filed, he enters the title of each admiralty cause, a brief note of the cause of action, the names of the proctors, and, thereafter, chronological minutes of the steps in the cause, to its final determination, which practice promotes the convenience of the court, the clerk, and the parties, and is essential in preserving the due order of proceedings, and making them accessible to all who may be entitled to know them. By Rev. Stat. § 828, the docket and minute books in the Clerk's office are, during office hours, open to the inspection of any one without any charge therefor.²⁵

§ 266. Proctors and Advocates. I.

In all the courts of the United States, the parties may plead and manage their own causes personally, or by the aid of such attorneys or counsel as by the rules of the courts respectively are permitted to manage and conduct causes therein. Attorneys in admiralty courts are called proctors, from the Latin, *procurator*, French, *procureur*, after the usage of the civil law; and counsellors are called advocates.

²³ Rev. Stat. § 798; and see Rev. Stat. § 5504.

²⁴ *Caldwell v. Jackson*, 11 U. S. (7 Cranch), 276.

²⁵ See Act of Aug. 1, 1889, (25 Stat. p. 357, § 2).

The modes and conditions of admission as proctors and advocates are different in different districts, the whole matter being entirely subject to the rules of the respective courts. •

It is the peculiar duty of the proctor to conduct the proceedings out of court, the process, pleadings, entries, stipulations, admissions, consents, settlements, and motion papers. He is the nominal representative of the party, and his name should appear on all the papers; and all orders should be stated to have been made on his motion.

It is the peculiar duty of the advocate to represent the party in court, to make motions, examine witnesses, address the court, and advocate the cause.²⁶ The same lawyer is frequently both proctor and advocate in the cause.

§ 267. Proctors and Advocates. II.

Proctors are more properly appointed by the party in writing; but there is no legal necessity for a written proxy, a verbal appointment is sufficient; and till denied, the court presumes the proctor who appears has proper authority. The court may always call upon him to state for whom he is authorized to appear.

If the party have a proctor and advocate, he cannot conduct the cause himself; nor can he call to his assistance one who is not a proctor or advocate of the court.

Both proctor and advocate, while the cause is pending, have full power over it. After final decree, they have no power, except to sue out execution and superintend and direct its enforcement. They have no power to discharge the decree, except on its performance, unless authorized by the party.²⁷

§ 268. Proctors and Advocates. III.

The power of the proctor and advocate is revocable by the party without cause assigned. It should be done by leave of the court, on notice to the proctor. And, on the application of the party, the general powers of the proctor or advocate may be restricted.

Proctors and advocates are officers of the law and of the courts, held to the strictest integrity, and the best faith and honor to their clients and the court. They are accountable to the court for their

²⁶ Rev. Stat. § 747.

²⁷ Rev. Stat. § 747; *The Wilhelmine*, 1 W. Rob. 335; *The Frederick*, 1 Hag. Ad. R. 223; *Mynn v. Robinson*, 2 Hag. Ecc. 195; *Prentice v. Prentice*, 3 Phill. 311; *Whish v. Hesse*, 3 Hagg. Ecc. 687; *In the Goods of Lady H. Finch*, id. 255; *The Harriet*, Olc. 229.

professional conduct, and are subject to be deprived of their privileges and office, and otherwise punished, by attachment, fine, disbarment or imprisonment by the court, for violation of professional duty, or for such moral delinquency as would bring into disrepute the administration of justice.

§ 269. The District Attorney.

The United States are always represented in all cases in courts, civil as well as criminal, by the District Attorney of the United States for the district in which the suit is pending, except in the Supreme Court. In that court, the Attorney General and Solicitor General of the United States represent the Government.²⁸

§ 270. United States Commissioners and Notaries. I.

By Revised Statutes § 627, the Circuit Courts of the United States were formerly authorized to appoint as commissioners of the Circuit Courts such and so many discreet persons within the district as might be necessary, to execute the powers conferred on commissioners. Such commissioners held their office at the discretion of the judge appointing them. By ch. 252 of the laws of 1896, sec. 19 (29 Stat. p. 184) the office of commissioner of the Circuit Court was abolished and power was given to the District Courts to appoint United States Commissioners, who should hold office for four years and have the same powers formerly exercised by commissioners appointed by the Circuit Courts.

By Rev. Stat. § 945, commissioners are authorized to take affidavits and bail in civil causes in the District Courts, to have the like force and effect as if taken before a judge of the court, and by § 813 they are also authorized to take depositions. By § 727 they are clothed with all the powers that a judge or justice of the peace may exercise. Under § 4546 they have power, if a seaman's wages are not paid within ten days after they ought to be paid, to summon the master of the vessel to show cause why process should not issue against the vessel. They are also empowered to arrest and imprison or bail offenders for any crime or offence against the United States, under and by virtue of §§ 1014 and 4546, and to require and to take recognizances of witnesses.

By § 1778, it is provided, that in all cases in which, under the laws of the United States, oaths or acknowledgments may be taken or made before any justice or justices of the peace of any state or territory, or the District of Columbia, they may be also taken

²⁸ Rev. Stat. §§ 359, 771.

or made by or before any notary public, duly appointed in any state, district or territory, or any United States Commissioner and, when certified under the hand and official seal of such notary, or commissioner, they shall have the same force and effect as if taken or made by or before such justice of the peace. By § 865, notaries public are also authorized to take depositions and do such other acts in relation to evidence to be used in the courts of the United States, in the same manner, and with the same effect, as commissioners.

§ 271. United States Commissioners and Notaries. II.

By the rules of the Supreme Court, commissioners (and hence notaries), are authorized to take bonds or stipulations in admiralty causes, and, in cases where the court may deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit, to one or more commissioners, to hear the parties and make report therein, with all the power of Masters in Chancery on references, including the power to administer oaths and examine parties and witnesses.²⁹ This rule unquestionably authorizes the court to refer matters to any person who, by the order of reference, may be appointed a commissioner for that matter alone. Commissioners may be appointed, not only to take evidence and report the same to the court, but also to hear and determine the issues, subject, of course, to confirmation of the report by the court.³⁰

§ 272. The Marshal. I.

The marshal of the district is the executive officer of the Supreme Court, the Circuit Court of Appeals, the Circuit Courts, and the District Courts, in the district for which he is appointed. He is appointed by the President, by and with the advice and consent of the Senate, for four years, but is removable at the pleasure of the President.

Before he enters on the duties of his office, he must become bound for the faithful performance of the same, by himself and by his deputies, before the judge of the District Court of the United States, jointly and severally with two good and sufficient sureties, inhabitants and freeholders of the district to be approved by the district judge, in the sum of \$20,000, and he must take, before said judge, (as must also his deputies, before they enter on the duties of their appointment,) an oath of office that he will faithfully execute all lawful precepts directed to the marshal of the district, under the authority of the

²⁹ Ad. Rule 5, 35, 44; Dist. Rule, 51 to 55; *The Wavelet*, 25 F. R. 733.

³⁰ But see *Luckenbach v. Del. L. & W. R. Co.*, 168 F. R. 560.

United States, and true returns make, and in all things well and truly, and without malice or partiality, perform the duties of the office of marshal, (or marshal's deputy, as the case may be,) of his district, during his continuance in said office, and will take only his lawful fees.³¹

§ 273. The Marshal. II.

It is his duty to execute, throughout the district, all lawful precepts directed to him, and issued under the authority of the United States, and he has the same powers in executing the laws of the United States, as sheriffs and their deputies in the several states have by law, in executing the laws of the respective states. He has power to command all necessary assistance in the execution of his duty, and to appoint, as there shall be occasion, one or more deputies, who shall be removable from office by the judge of the District Court, or the Circuit Court sitting within the district, at the pleasure of either.³²

§ 274. The Marshal. III.

If the marshal or his deputy be a party to, or interested in, the suit or proceeding, the writs and precepts therein shall be directed to such disinterested person as the court, or any justice or judge thereof, may appoint, and the person so appointed is authorized to execute and return the same.

In case of the death of the marshal, his deputies continue in office, unless otherwise specially removed, and execute the office in the name of the deceased, until another marshal be appointed and sworn.

The defaults or misfeasances in office of the deputies, as well after as before the death of the marshal, are breaches of the condition of the marshal's bond, and the deputies are responsible to the executors or administrators of the marshal, in the same manner as to him in his life-time.

§ 275. The Marshal. IV.

When the marshal or his deputy is removed from office, or his term has expired, he has power to execute all such precepts as are in his hands at the time; and the marshal is answerable for the delivery to his successor of all prisoners in his custody. The removal does not take effect till notice of the appointment of the successor.³³

³¹ Rev. Stat. §§ 782, 783.

³² Ad. Rule 41; Rev. Stat. §§ 780, 787, 788.

³³ Rev. Stat. 789, 790; *vide* Wortman v. Conyngham, 1 Pet. C. C. R. 241; Rogers v. The Marshal, 68 U. S. (1 Wallace), 644.

relative to passengers.⁵ These exceptions show that when New York was given exclusive jurisdiction to low water mark on the New Jersey shore over the waters of "the Bay and Harbor of New York," only the Upper Bay was meant; and, taken with the grant of like jurisdiction over the waters of the Hudson River lying west of Manhattan Island, it follows that New York has exclusive jurisdiction to low water mark on the New Jersey shore only between the line of Spuyten Duyvil Creek and Constable Hook. New Jersey has exclusive jurisdiction over the docks, wharves and improvements and over vessels aground, or made fast to wharves on its shore from latitude 40° 59' 49.74" to Sandy Hook.⁶

§ 279. Boundaries of the Counties Over Waters About New York.

The Eastern District of New York includes the waters of the counties of Kings, Queens, Nassau,⁷ Suffolk and Richmond, the counties which compose Long Island and Staten Island.

Kings County, and hence the waters thereof, extends on the west to "the middle of the main channel of the Hudson River, from the southern boundary of the County of New York, to the ocean."⁸ As the boundary line between the States of New York and New Jersey runs nearly east and west through the Romer Beacon, as is shown in the preceding Section, that line marks the southerly boundary of Kings County in the Bay of New York. The western boundary of the county runs north from that line through the middle of the main channel of the Lower Bay and the middle of the Narrows, until it meets the southerly boundary of New York County at a line drawn west from Red Hook, Long Island; the Kings County boundary turns east on that line and runs to Red Hook.⁹ From Red Hook through the East River, the western boundary of Kings County (and also Queens County) passes along low water mark on the Brooklyn shore,¹⁰ as far as to Lawrence Point at the beginning of Long Island Sound. On the north, the boundaries of Queens, Nassau¹¹ and Suffolk Counties extend to the line between the States of New York and Connecti-

⁵ Cons. Laws of the State of New York, Vol. V, p. 3865, Art. 4.

⁶ Cons. Laws of the State of New York, Vol. V, p. 3865. *The Mary McCabe*, 22 F. R. 750; *The Norma*, 32 F. R. 411.

⁷ U. S. Rev. Stat. Sec. 541. Nassau County has since been carved out of Suffolk County. Laws of N. Y. of 1898, ch. 588.

⁸ Rev. Stat. of N. Y., Part 1, Ch. 2, tit. 1, Sec. 2, (3).

⁹ Id. Sec. 2 (3) and (5).

¹⁰ Id.

¹¹ See Note 7.

cut,¹² i. e., a line running very nearly through the middle of the Sound.¹³

Richmond County, or Staten Island, is bounded on the east by the line of Kings County, running through the middle of the main channel of the Bay and the Narrows: its northern and western boundary follows the boundary line between New Jersey and New York from the middle of the Upper Bay opposite the Kill van Kull, through the middle of the Kill van Kull and the Arthur Kill; and on the south its boundary runs through Raritan Bay as set forth in the preceding paragraph, as far as the middle of the main channel of the bay,¹⁴ where it again meets the line of Kings County.

§ 280. Boundaries of the Eastern and Southern Districts over Waters About New York.

The boundary line of the Eastern District of New York, therefore, follows the southern boundary of Kings County from the sea to the main channel of the Bay, the southern and western boundary of Richmond County around Staten Island, the northern boundary of Richmond and Kings counties across the Bay from the Kill van Kull to Red Hook, the western boundary of Kings and Queens counties through the East River, and the northern boundary lines of Queens and Suffolk counties through Long Island Sound, and thence continues around the eastern end and southern side of Long Island to New York Bay, apparently following low water mark around Long Island, since the counties are bounded by "the Atlantic Ocean" on the south, and the boundaries of the Districts are governed by county lines.

The Southern District of New York, so far as its waters are concerned, commences, on its northern end, at the southerly line of the counties of Albany and Rensselaer, and includes all the counties of New York State which do not lie within the Eastern, Northern and Western¹⁵ Districts, and hence includes the public navigable waters of those counties. The East River is entirely in New York County.¹⁶ The Southern and Eastern Districts of New York have concurrent jurisdiction¹⁷ over the waters of the counties of New York, Kings,

¹² N. Y. Laws of 1881, ch. 695.

¹³ N. Y. Laws of 1880, ch. 213. See *Mahler v. Transportation Co.*, 35 N. Y. 352.

¹⁴ Rev. Stat. of N. Y., Part 1, ch. 2, tit. 1.

¹⁵ U. S. Rev. Stats., Sec. 541. The Western District has been established since the revision of the Statutes. Act of May 12, 1900, 31 Stat., p. 175.

¹⁶ N. Y. Rev. Stat., Part 1, ch. 2, tit. 1, Sec. 2 (5).

¹⁷ U. S. Rev. Stats. Sec. 542.

Queens, Nassau,¹⁸ and Suffolk, but not over the waters of Richmond County, which are exclusively within the jurisdiction of the Eastern District.

§ 281. Jurisdiction of the United States Districts Over Waters About New York.

The limits and jurisdiction of the United States districts follow the limits and jurisdiction of the States, and vary as the limits of the latter lawfully vary.¹⁹

The jurisdiction of the United States districts over the waters of the Hudson River, the Bay of New York, the Kills, the East River and Long Island Sound is therefore as follows: From the southerly line of Albany and Rensselaer counties, the Southern District of New York has exclusive jurisdiction over the waters of the Hudson River as far south as the line of latitude 40° 59' 49.74". From that line of latitude to a line drawn across the river at Spuyten Duyvil Creek, the Southern District of New York has jurisdiction over the eastern half of the river and the District of New Jersey over the western half.²⁰ From the line of latitude 40° 59' 49.74" to Sandy Hook, the District of New Jersey has exclusive jurisdiction over vessels aground on or made fast to the New Jersey shore; that District also has exclusive jurisdiction over the half of the Kills next to New Jersey from Constable Hook to Woodbridge Creek, except as to quarantine and passenger laws: over the Kills and Raritan Bay from shore to shore between Woodbridge Creek and a line drawn from Princess Bay Lighthouse, Staten Island, to Matayan Point, New Jersey, and over the waters of Raritan and New York Bays south of the line from the Boundary Beacon through the Romer Beacon to a point at the intersection of a line between the Oriental Hotel, Coney Island, and the Hook Beacon, and south of a line running from that point east to the main sea, so far as the latter waters lie within the jurisdiction of the State of New Jersey.²¹

From the line of Spuyten Duyvil Creek to the sea, and through Long Island Sound, the Southern and Eastern Districts have concurrent exclusive jurisdiction over the whole of the Hudson River²²

¹⁸ See Note 7.

¹⁹ *Ex parte Devoe Mfg. Co.*, 108 U. S. 401.

²⁰ Articles of Agreement, Art. 3. See *Ex Parte Devoe Mfg. Co.*, 108 U. S., p. 401.

²¹ See *Lennan v. Hamburg-American Packet Co.*, 73 App. Div. (N. Y.) 357: *Hamburg-American Packet Co. v. Grube*, 196 U. S. 407.

²² Judge Nixon, of the District of New Jersey, in *The Sarah E. Kennedy*, 25 F. R. 569, held that under the authority of *Ex parte Devoe Mfg. Co.*, 108 U. S. 401, the District of New Jersey extends to the middle line of the

and of the whole of the Upper Bay; over the eastern half of the Narrows and the portion of the lower Bay, east of the middle of the main channel as far south as the line from the Boundary Beacon in Raritan Bay to the point between Coney Island and Sandy Hook mentioned above; over the whole of the East River, and over the southern half of Long Island Sound. The Eastern District has exclusive jurisdiction of the waters immediately surrounding Staten Island to about the middle line of such waters, (i. e., to the county boundaries being more particularly set forth above,) except between Woodbridge Creek and Princess Bay Lighthouse, where it has jurisdiction only over the docks on Staten Island and vessels at such docks or aground on that shore.

§ 282. The Seaward Boundary of the Districts.

At the outer entrance of the Bay of New York, the jurisdiction seaward of both the Southern and Eastern Districts of New York and of the District of New Jersey is bounded by a line drawn from the southerly Navesink Lighthouse to Scotland Light vessel and from thence through Gedney Channel whistling buoy to Rockaway Point Life Saving Station, which line marks the division between the inland waters of the United States and the high seas.²³

Hudson opposite Manhattan Island. But by that agreement (Art. 4) only a limited jurisdiction was given to New York over the waters of the Kill van Kull, which were the *locus in quo* in the case of the Devoe Mfg. Co., while the agreement gave New York general and exclusive jurisdiction of the waters of the Hudson opposite Manhattan Island to low water mark on the New Jersey shore (Art. 3). Judge Brown, of the Southern District of New York, in the *Norma*, 32 F. R. 411, held, contrary to the decision in *The Sarah E. Kennedy* that the jurisdiction of the New York Districts extends in that locality over the waters of the river to low water mark on the New Jersey shore. The latter opinion is *obiter* on the point in question, but the reasoning of it seems unassailable.

²³ See Boundary Lines of the High Seas, appended to the Pilot Rules for Inland Waters, issued by the Department of Commerce and Labor.

CHAPTER XIX.

THE PRACTICE OF THE AMERICAN ADMIRALTY COURTS, HISTORICALLY CONSIDERED.

§ 283. It does not Conform to State Practice.

The practice in the courts of the United States, sitting as courts of common law, was made to conform to that of the Supreme Courts of the respective states. As all the states had courts of common law, to which the citizen usually resorted, and with whose mode of proceeding he was acquainted, it was not desirable that the general government should, in that matter, introduce an inconvenient novelty, or establish a uniformity of practice which could hardly fail to be burdensome. On the other hand, the admiralty and maritime jurisdiction was, by the constitution, entirely transferred from the states to the general government, and made a purely federal jurisdiction, of limited extent and peculiar character, and it was equally desirable that it should be uniform throughout the states, as well as conformable to the course of proceedings in the admiralty courts of other nations, and of the separate states before the adoption of the constitution.

§ 284. The Judiciary and Process Acts.

The act to establish the judicial system of the United States was passed on the 24th of September, 1789, and five days thereafter, on the 29th of the same month, was passed the "Act to regulate the processes in the courts of the United States." This act adopted, as the practice of the courts of the United States, in the respective states, in suits at common law, the practice of the Supreme Courts of the states, and provided also that "The forms and modes of proceedings in causes of equity and of admiralty and maritime jurisdiction, shall be *according to the course of the civil law*." This act was, by its own provision, to continue in force until the end of the next session of Congress, and no longer.¹ It was continued May 26, 1790, and Feb.

¹ 1 Stat. at Large, p. 93; *The St. Lawrence*, 1 Black, 528; *Manro v. Almeida*, 23 U. S. (10 Wheat.) 473; *vide The American Ins. Co. v. Johnson*, Blatchf. & H. 10.

18, 1791; and repealed, and its place supplied May 8, 1792.² Its necessary effect was, however, to start the courts on that system of practice, and really to impose upon them, in admiralty and maritime cases, the civil law practice, as that under which they must continue to administer justice, even after the expiration of that act, until further provision should be affirmatively made.

§ 285. The Act of 1792.

This adoption, however, of the course of the civil law, without modification or exception, could not fail to be somewhat embarrassing, by keeping the courts fettered by many rules and proceedings, which in the admiralty and maritime courts of other countries, to which ours were to be assimilated, had, long before, been directly abrogated or allowed by tacit neglect to give place to simpler and less technical proceedings; and might, in a measure, defeat the very unity and uniformity which it was intended to establish. Accordingly, on May 8, 1792, Congress passed the act "For regulating processes in the courts of the United States," now § 913 et seq. of the Revised Statutes, which provided that the forms of writs, executions and other process, except their style, and the forms and modes of proceedings in suits of admiralty and maritime jurisdiction, should be *according to the principles, rules and usages which belong to courts of admiralty, as contradistinguished from courts of common law*; subject, however, to such alterations and additions as the said courts should in their discretion deem expedient, or to such regulations as the Supreme Court of the United States should think proper, from time to time, by rule to prescribe to any circuit or district court concerning the same.³

§ 286. Its Effect on the Practice.

Under that Act of 1792, the practice of the courts in admiralty and maritime cases maintained its characteristic resemblance to the principles, rules and usages of courts of admiralty. The courts, however, in the different districts, have differed from each other in many of the less important details, quite as much as the whole have differed from the admiralty courts of other countries, while in all can be traced

² 1 Stat. at Large, 93, 123, 191, 275; Rev. Stat. § 913 et seq.

³ Dunlap Prac. 72, 79; Grayson v. Virginia, 3 U. S. (3 Dal.) 320; Manro v. Almeida, 23 U. S. (10 Wheat.) 473; The Process Act of 1792, § 2; The St. Lawrence, 66 U. S. (1 Black.) 528.

the evidence of their common descent from the practice of the civil law.⁴

§ 287. The Practice under the Civil Law.

The primitive Roman lawsuit had few details and little machinery. The plaintiff himself, without writ, seized his adversary by the neck, and took him by force before the Prætor. The plaintiff told his grievance, the defendant his defence; proof was taken if necessary; the cause was decided without delay; and if the demand was not paid, the defendant was confined as a criminal, or payment was enforced by a forcible sale of his property. Necessity and convenience transferred the power to arrest from the party himself to officers of justice appointed for the purpose. The order of the judge then became necessary, which soon ripened into a process or citation. The judge required a written statement of the plaintiff's case, which soon became the libel. Security to appear and to pay the debt, or bail, took the place of forcible detention; and a written statement of the defence was demanded instead of a verbal one. Ingenuity, and wisdom, and eloquence were put in requisition, and from thence sprang the legal profession; and from its acuteness and habits of analysis, grew inevitably and insensibly a complicated and technical system of proceedings, which had come to the greatest perfection of strictness in the time of the empire. Many of the details of that practice are now unknown; and although Brown asks with emphasis,—“How can the practice of the Admiralty Court be intelligible without knowing the practice of the civil law?” and Lord Hardwicke says,—“The Court of Admiralty always proceeds according to the rules of the civil law,” this is true only in a very general sense.⁵

§ 288. The Admiralty Practice differs.

The course of a lawsuit in ancient Rome, so far as it can be now ascertained, and even as it exists at this time in the countries subject to the civil law after many centuries of modifications and meliorations, is of the same type with a suit in admiralty, as conducted in modern days. And the study of that wonderfully refined and artificial mode of proceeding, in all its details of subdivision and systematic distribu-

⁴The U. S. v. The Little Charles, 1 Brock. 380; Jennings v. Carson, 8 U. S. (4 Cranch), 2.

⁵2 Brown Civ. & Ad. Law, 507; Sir Henry Blount's Case, 1 Atk. 295; Lane v. Townsend, Ware 298, 299; The American Ins. Co. v. Johnson, Blatchf. & H. 17.

tion of subjects, cannot fail to have a salutary effect upon the mind of the student, in furnishing him a careful analysis and classification of all the elements of a complete system of remedies through the medium of courts of justice, and could not be without its advantage in showing him the origin of many actual rules of practice in courts of admiralty. Still the deviation from that original type is so wide, and so great a proportion of the details have been wisely allowed to fall into disuse, that no attempt will be made to furnish even a synopsis of the Roman practice, nor to elucidate, much less to cover up or encumber that which is in its nature, simple, intelligible and natural, by the obsolete learning and multifarious technicalities of earlier periods or other countries. The attempt will be only, in as simple and intelligible a manner as practicable, to give the actual practice of the courts of the United States in admiralty and maritime causes, with special reference to the practice of the Southern and Eastern Districts of New York, the districts in which lies the city of New York.

§ 289. The Act of 1842.

The actual admiralty practice of modern times, is in truth, so natural and simple, that it is not easy to see why any diversity should exist in the established practice. The deviations from a universal and uniform system of proceedings which may be necessary in particular cases, may well enough be left to the discretion of the court, to be exercised as the circumstances of the case may demand, without, in any manner, affecting the general rule. Congress seems to have felt the importance of this uniformity, and, with a view more fully to secure it, to have passed the act of August 23, 1842.* Section six has been embodied in § 917 of the Revised Statutes which reads as follows.

“The Supreme Court shall have power to prescribe, in any manner not inconsistent with any law of the United States, the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of taking and obtaining evidence, of obtaining discovery, of proceeding to obtain relief, of drawing up, entering and enrolling decrees, and of proceeding before trustees appointed by the court, and generally to regulate the whole practice to be used in suits in equity or admiralty by the Circuit and District Courts.”

* 5 Stat. at Large, 518.

The powers of the court seem to be confined by the act, strictly to regulating the conduct of a suit.

§ 290. The Admiralty Rules of the Supreme Court.

Under that Act of 1842, the Supreme Court, in 1844, adopted "Rules of Practice of the Courts of the United States, in causes of Admiralty and Maritime Jurisdiction, on the Instance side of the Court,—in pursuance of the act of 23d August, 1842, chap. 188." These rules, although in many respects incomplete as a system of practice, lay down and establish the leading and characteristic outlines of the admiralty practice, leaving the District and Circuit Courts to regulate the practice of those courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty, in all cases not provided for by the rules adopted by the Supreme Court.⁷ These rules, also, presuppose a knowledge of the general course of admiralty practice, and of many of its details, as it has come to us from the civil law courts on the continent, modified in England by the practice of the ecclesiastical courts and the Court of Chancery, and to those who are already familiar with the course of admiralty proceedings, these rules are the clear and easily understood introduction of a most salutary reform in the admiralty practice, abolishing and rendering unnecessary many of the cumbrous and useless forms and proceedings which, in earlier periods, perhaps, were not without practical benefit

It will be seen that they apply equally to all the courts of the United States, as well the Supreme and the Circuit Courts of Appeal as the District Courts, in admiralty and maritime cases. Many matters of minor detail have been left to be prescribed by the courts themselves, by their own rules, and many others to be disposed of as they arise, according to the discretion of the presiding judge. In those matters of minor detail, instead of stating the practice of several districts, that of the Southern and Eastern Districts of New York is alone given and the District Court Rules referred to are the rules of those districts.

⁷ Ad. Rule 46. Rev. Stat. § 918. These rules are inserted at length in the Appendix.

CHAPTER XX.

THE GENERAL CHARACTER AND COURSE OF ADMIRALTY PROCEEDINGS.

§ 291. Equity and Justice are the Foundation.

The admiralty court, as before stated, is bound to determine the cases submitted to its cognizance, upon equitable principles, and according to the rules of natural justice. This principle of the maritime law pervades also the whole practice of the admiralty in the United States. The grand object of doing justice between the parties is superior to technical rules and forms, and where the stricter practice of the common law, or the civil law, would turn a party out of court, or defeat or pervert justice, by considering an arbitrary rule of proceeding as paramount to all other considerations, the American admiralty finds, in the educated reason and cultivated discretion of the court, the means of defeating chicanery, rectifying mistakes, supplying deficiencies, and suggesting to the party the means of reconstructing his case, if necessary, without the loss of such real progress as he may have already made.¹

§ 292. Suits in Rem and in Personam.

Suits and proceedings in admiralty are divided into two great classes, suits and proceedings *in rem*, and suits and proceedings *in personam*.

Suits *in rem* are against a thing itself, and the relief sought is confined to the thing itself, and does not extend to any person, though the suit may have arisen out of transactions between persons.² In a suit *in rem*, unless some one intervenes and assumes the

¹The *Virgin*, 33 U. S. (8 Pet.) 538; The *Minerva*, 1 Hag. Ad. R. 357; The *Packet*, 3 Mason, 255; The *Zephyr*, id. 343; *Sheppard v. Taylor*, 30 U. S. (5 Pet.) 675; *Oliver v. Alexander*, 31 U. S. (6 Pet.) 143; The *Phebe*, Ware, 354; The *Adeline*, 13 U. S. (9 Cranch), 234; *W. S. Keyser & Co. v. Jurvelius*, 122 F. R. 218. Thus a party who had sued on a contract of affreightment, which suit he had not sustained, but who had made out a case for a partial recovery upon a basis of general average, was allowed a recovery in general average. The *Rapid Transit*, 52 F. R. 320.

²The *Queen of the Pacific*, 61 F. R. 213.

responsibilities of the controversy, the power and process of the court are confined to the thing itself, and do not reach either the person or the other property of its owner. Suits *in personam* are against an individual, the relief is sought against him, and the court is confined to the rights and liabilities of the person, and, in its execution, proceeds against his property generally, without any regard to its relation to the matter in controversy.³

§ 293. No Criminal Proceedings in Rem.

There are no criminal proceedings *in rem*. The only cases of quasi criminal and penal character are those for the enforcement of the penalties and forfeitures which are imposed by law upon property afloat, under the navigation and revenue laws. They are, like other cases *in rem*, classed with civil causes, and are tried without the intervention of a jury.⁴

§ 294. Joinder of Proceedings in Rem and in Personam.

Admiralty Rules 12 to 20, by declaring the right of action in certain cases to be either against the ship or against her owner or master, impliedly forbid the joinder of a suit *in rem* against the vessel and *in personam* against her owner in cases of supplies and repairs, wages, pilotage, collision, assault and battery on the high seas, hypothecation and bottomry, and salvage.⁵ In the case of the *Corsair*,⁶ the Supreme Court held that there could be no such joinder in cases falling within these rules, but it left open the question as to whether there could be a joinder in cases other than those specified in the rules. And the Supreme Court has never passed upon the latter question. But other courts have done so, and have held in favor of the right of joinder; and the advantage of such right is so obvious and the objections thereto are so technical that there can be little doubt that the practice will be upheld if the question is ever squarely presented to the highest court.⁷

In collision suits, though the joinder of the ship and her owner is

³ *The Merchant*, Ab. Ad. 1; *Beane v. The Mayurka*, 2 Curt. C. C. 72; *Marshall v. Bazin*, 7 N. Y. Leg. Obs. 342.

⁴ *The U. S. v. The Eliza*, 11 U. S. (7 Cranch), 112; *The Commerce*, 66 U. S. (1 Black.) 574; *The Slavers*, 69 U. S. (2 Wall.) 383.

⁵ Ad. Rules 12-20; *The Corsair*, 145 U. S. 335; *Mayor v. White*, 59 F. R. 617; *The Ethel*, 66 F. R. 340; *The Alida*, 12 F. R. 343; *The Clatsop Chief*, 8 F. R. 163; *The Guiding Star*, 1 F. R. 347.

⁶ *The Corsair*, 145 U. S. 335.

⁷ See *The Thomas P. Sheldon*, 113 F. R. 779; *The Zenobia*, Abb. Adm. 48.

forbidden, there is nothing to forbid the joinder of a ship with the owner of another ship, and this is frequently done, both directly and through the medium of the 59th Rule.⁸ And there can be no objection, in any of the cases specified under Rules 12 to 20, to the joinder of proceedings *in rem* and *in personam*, where the person so sued is not the owner of the *res* which is sued, as e. g., a suit against a ship and her charterer, or mortgagee in possession, or a suit against a ship and a stevedore,⁹ always provided that the claims against the ship and the person are properly related one to the other.¹⁰

The deduction from the decided causes is that in cases of affreightment, or charter, or bill of lading, or demurrage, or general average, or possession, or for torts, except assault and battery, and in any other case not specified under Rules 12 to 20, a proceeding *in rem* against the ship and *in personam* against her owner may be joined.¹¹ Separate suits for any one of the causes of action specified in Rules 12 to 20 may also be maintained against a ship and her owner, but one will sometimes be stayed until the hearing of the other,¹² though not necessarily.¹³

In cases of misjoinder, the libel will not be dismissed *in toto*, but will be dismissed as to one defendant and retained as to the other,¹⁴ and failure to object to a misjoinder until final hearing on appeal will cause the court to disregard the misjoinder.¹⁵

§ 295. Suits in Personam.

One of the early attempts to limit the jurisdiction of the admiralty consisted of a denial of its power to entertain a suit *in personam*. In England, and in this country on English authority, it was said that, since the venue has become immaterial, the courts of common law are competent to give relief in all personal actions; that when the

⁸ See *post*, § 410. *The Shand*, 10 Ben. 294; *The Clatsop Chief*, 8 F. R. 163; *The Monte A.*, 12 F. R. 331; *The Director*, 26 F. R. 708; *Joice v. Canal boats*, 32 F. R. 553; *The Planet Venus*, 113 F. R. 387.

⁹ *The Clan Graham*, 153 F. R. 977.

¹⁰ *Heney v. The Josie*, 59 F. R. 782.

¹¹ *The Monte A.*, 12 F. R. 331; *Dumois v. The Baracoa*, 44 F. R. 102; *The Director*, 26 F. R. 708; *The Prinz Georg*, 19 F. R. 653.

¹² *Atlantic Mut. Ins. Co. v. Alexandre*, 16 F. R. 279; *The Normandie*, 40 F. R. 590, 43 F. R. 151, 58 F. R. 427.

¹³ *Prov. Wash. Ins. Co. v. Wager*, 35 F. R. 364; *The Normandie*, 40 F. R. 590, 43 F. R. 151 and 58 F. R. 427.

¹⁴ *The Thomas P. Sheldon*, 113 F. R. 779; (S. C. on appeal) *The S. L. Watson*, 118 F. R. 945; *The San Rafael*, 134 F. R. 749 and 141 F. R. 270.

¹⁵ *The Willamette*, 72 F. R. 79.

common law can give relief, the admiralty has no jurisdiction; and that the admiralty has jurisdiction *in rem* only because the common law has no power to proceed *in rem*. This point was urged with some emphasis, although almost all of the earlier English cases, and many of the latest, are cases *in personam*. Clerke, in his Praxis, devotes the first and largest portion of the work to proceedings *in personam*. The same is true of Boyd, in his Proceedings of the Scotch Admiralty. Suits *in personam* have always been of constant occurrence in the continental courts of admiralty, and it is the usual mode of proceeding there; and they constituted, in all periods, a large portion of the business of the British Colonial Courts of Vice-Admiralty, before the American Revolution; and since that period, in the English Admiralty, at home, and in our own courts, suits *in personam* have been of frequent occurrence. It is only remarkable that judges, of distinguished learning and acuteness, should ever have been mystified on the subject.

Wherever there is personal liability on a maritime cause of action, wherever there are personal contracts and injuries which concern navigation, the right may be enforced by a suit *in personam*, in the admiralty.

Wherever there is a maritime lien on a thing, the lien may be enforced by a suit *in rem*, in the admiralty.

§ 296. The Parties.

The party complaining is called the libellant, the party resisting is called generally, the defendant, which term may be used of either a person or a thing defending. The personal defendant in a suit *in rem* is called the claimant, because his right to appear or intervene depends upon his claiming the property, or some interest in it. In limitation of liability proceedings, the term claimant is applied to one who files his claim to recover against the fund surrendered: if he also answers the libel of limitation he is claimant and respondent. In suits *in personam*, the party defending is the respondent. Both parties are actors. The libellant is sometimes called the plaintiff or the promovent: the respondent was formerly known at times as reus and impugnant. Both libellant and respondent are at times intervenors. On appeals, the parties are styled appellant and appellee.

§ 297. All Parties Bound by the Decree.

The familiar principle that all the parties to a suit are bound by the decree has its widest application in cases of admiralty suits and

proceedings *in rem*. The decree, as has been remarked, can only dispose of the thing, but so far as the thing is concerned, all of the world is bound by the decree; that is to say, a decree as to the title, or possession, or sale, or forfeiture of the thing, binds all the world. No man is allowed to come in and say that the decree does not bind him, and that he will have the matter retried; and this is because all the world is party to the suit. By the regular process of the court, all parties who have any interest in the thing are warned to come in and defend it; and it is therefore said that the whole world is a party in an admiralty cause, and therefore, the whole world is bound by the decision.¹⁶ The reason on which this dictum stands will determine its extent. Every person interested may make himself a party, and appeal from the sentence. But notice of the controversy is necessary in order to become a party; and it is a principle of natural justice, of universal obligation, that before the rights of an individual be bound by a judicial sentence, he shall have notice, either actual or implied, of the proceeding against him. Where these proceedings are against the person, notice is served personally or by publication. Where they are *in rem*, notice is served upon the thing itself. This is, necessarily, notice to all those who have any interest in the thing; and it is reasonable, because it is necessary, and because it is the part of common prudence for all those who have any interest in property to guard that interest, by means of persons who are in a situation to protect it. Every person, therefore, who can assert any title to a vessel, has constructive notice of her seizure, and may fairly be considered as a party to the libel; but those who have no interest in the vessel which could be asserted in a court of admiralty have no notice of the seizure, and can, on no principle of justice, be considered as parties in the cause, so far as respects the vessel.¹⁷

§ 298. The Libel.

He that has a maritime suit to prosecute, sets forth, in writing, addressed to the court, or the judge of the court, his cause of action, circumstantially and intelligibly, with simplicity and conciseness, and closes with a prayer for the relief which he desires. This is called

¹⁶ *The Neptune*, 3 Hag. Ad. R. 132; *The Attorney Gen. v. Norstedt*, 3 Price, 109; *The Mary*, 13 U. S. (9 Cranch), 126; *Croudson v. Leonard*, 8 U. S. (4 Cranch), 434. But see *Cushing v. Laird*, 107 U. S. 69; *The James G. Swan*, 10 F. R. 94.

¹⁷ *The Mary*, 13 U. S. (9 Cranch), 126; *Gelston v. Hoyt*, 16 U. S. (3 Wheat.) 246; *The Commander-in-Chief*, 68 U. S. (1 Wall.) 43.

a libel, from the Latin *libellus*, a little book. It is signed by the proctor and verified by the oath of the party, and is presented to the clerk of the court, with security for costs when necessary. The clerk files it and issues the proper process to the marshal of the district, who executes the process according to its direction, and holds the property till it is sold or discharged.

§ 299. The Answer.

The defendant appears, and in the same circumstantial, simple, and concise manner, sets forth, in writing, what he has to say in answer and defence to the suit. This is called an answer, which being signed and sworn to, is also filed with the clerk.

§ 300. The Replication or Reply.

Until 1854, it was the practice for the libellant, after the respondent had filed his answer, to file a general denial of the allegations of the answer, which was called a replication, or reply.¹⁸ In that year there was promulgated the fifty-first Admiralty Rule of the Supreme Court, which abolished the replication and provided that when the defendant, in his answer, alleged new facts, these should be considered as denied by the libellant. The rule, however, gave the libellant the liberty, within such time as the District Court should fix by its rules, or by its special order, to amend the libel, so as to confess and avoid, or explain, or add to the new matters set forth in the answer, and it called upon the defendant to answer such amendments. In 1896, the Supreme Court Amended Rule 51, so as to again allow the libellant to file a replication, but only on cause shown and special order of the court. (See 160 U. S. 693.) There are cases where a reply is conducive to a clear definition of the issue to be presented to the court. Thus, in the case of the *Stanley H. Miner*,¹⁹ the libel was filed as for an ordinary salvage service. The claimant did not dispute the fact that a salvage service had been rendered, but answered that it was performed under a contract for a specified amount: the libellant thereupon replied that that contract was made under circumstances of fraud and false representation, and the case went to trial on the issue presented by the answer and reply, rather than by the libel and answer. In ordinary cases, however, replies are little used.

¹⁸ The *Mary Jane*, Blatchf. & H. 390, and note.

¹⁹ The *Stanley H. Miner*, 172 F. R. 486.

§ 301. Excepting to the Libel.

If the defendant finds that, on the libel itself, the libellant ought not to have the relief for which he prays, or that the court has not jurisdiction, instead of answering the facts alleged in the libel, he may except to the libel, stating, in written exceptions, the points in which he considers the libellant's case defective. Or, if he have any single fact which should constitute a complete bar to the action, he may set that up alone, in an exceptive allegation,²⁰ and rely upon it as a bar, or he may unite the whole in an answer, answering as to all the facts in the libel, and setting up others in avoidance or in bar, and stating his exceptions to the libel, and derive the same advantage from them as if he had set them up in separate pleadings. It was formerly held that objections to the jurisdiction should be set up at the commencement of the proceedings, but it is now well settled, that objection to the jurisdiction may be taken at any stage of the proceedings.²¹ This is true in its full extent, however, only where the want of jurisdiction springs from the subject-matter of the action. Where it is merely a matter of personal exemption or privilege, the court will, if practicable, hold that the appearance and answer of the defendant is a waiver of the exemption or privilege.²²

In like manner, the libellant may except to the answer for scandal, impertinence or insufficiency, and submit its form or its substance to the decision of the court, before incurring the expense of a trial.²³

§ 302. Petitions and Motions.

Whenever a party desires the order of the court, regulating, correcting, modifying, or arresting the proceedings in a cause, the matter may be brought up on motion, or where anyone desires to institute proceedings of an independent or summary character without any formal suit or process, of which the exercise of admiralty powers furnishes many instances, a petition is the usual mode of bringing the matter originally before the court, and the matter

²⁰ See *The Seminole*, 42 F. R. 924; *The John K. Gilkinson*, 150 F. R. 454.

²¹ *The John C. Sweeney*, 55 F. R. 540; *The Lindrup*, 70 F. R. 718; *The Oceano*, 148 F. R. 131.

²² *Prankard v. Deacle*, 1 Hag. Ecc. 185; *The Girolamo*, 3 Hag. Ad. R. 173; *The Gladiator*, id. 340; *The Eliza Jane*, id. 337; *The Protector*, 1 W. Rob. 62; *The Alexander*, id. 293; *The Sarah Jane*, 7 Jur. 659; *Taylor v. Morley*, 1 Curteis, 481; *The Bee, Ware*, 332; *Atkins v. Fibre Dis. Co.*, 85 U. S. (18 Wall.) 272.

²³ Dist. Rule, 42; Ad. Rule 28.

may be carried to its final result, without the introduction of witnesses or the usual forms of a trial.

§ 303. Rules of Pleading.

The rules of pleading in admiralty do not require all the technical precision and accuracy which is necessary in the practice of the courts of common law, but they require that the cause of action should be plainly and explicitly set forth, in clear and intelligible language, so that the adverse party may understand what is the precise charge which he is required to answer, and make up an issue directly upon the charge. Since the evidence must be confined to the matters put in issue by the pleadings, and the decree must follow the allegations and proofs, the pleadings cannot fail to be of great importance, and good pleading is nowhere more important, or more characteristic of the best professional ability, than in admiralty causes.²⁴

§ 304. Forms.

There are no established or necessary forms, to which the pleadings or other proceedings or entries must conform, a party is at liberty to adopt such form and such phraseology as may best suit his taste, taking care that, in appropriate language, he bring his matter fully and intelligibly before the court. It is, nevertheless, shown by universal experience that well framed and appropriate forms for the various steps of judicial proceedings greatly contribute to the convenience of suitors and proctors, and promote that certainty, regularity, and intelligibility which constitute the perfection of such proceedings, and that uniformity which is so desirable.

²⁴ *Elwell v. Martin*, Ware, 53; *The William Harris*, id. 367; *McKinlay v. Morrish*, 62 U. S. (21 How.) 343; *Dupont v. Vance*, 60 U. S. (19 How. 162; *The Transport and The W. E. Cheney*, 1 Ben. 86; *The Havre and The Scotland*, id. 295.

CHAPTER XXI.

PRACTICE OF THE DISTRICT COURT—THE LIBEL.

§ 305. District in which Libel Filed.

In suits *in rem*, the libel must be filed in the district in which the *res* is found, and the libel must allege that the property is within the district;¹ but the claimant may waive the irregularity of its filing in another district.² In suits *in personam* with a clause of foreign attachment the libel should be filed in the district in which respondent has goods and chattels, or credits and effects,³ and the libel should indicate the nature and location of the goods or credits.⁴ Suits *in personam* without prayer for an attachment, may be brought in any district in which proper service can be made upon the respondent;⁵ the provision in the Act of March 3, 1887, ch. 373, § 1 (24 Stat. 552) that no civil suit shall be brought against any person in any other district than that whereof he is an inhabitant does not apply to suits in admiralty.⁶

§ 306. The Libel.

No process can issue from the District Court till the libel is filed in the clerk's office from which the process is to issue, the principle of the practice in this respect being that no process should issue except as the act of the court, and that the court cannot exercise a proper discretion in issuing the process, till the cause of action is properly placed before it, with a proper prayer for relief. The first proceeding is, therefore, the libel or information. It is called a

¹ Ad. Rule 23; *The L. B. X.*, 88 F. R. 290. The court does not obtain jurisdiction where the vessel is attached outside of the limits of the district; *The Hungaria*, 41 F. R. 109, *aff'd* 42 F. R. 510.

² *The Willamette*, 70 F. R. 874; or may on motion have the proceeding transferred to the right District; *Nelson v. The Willamette*, 53 F. R. 602.

³ *Atkins v. The Disintegrating Company*, 18 Wall. 272.

⁴ Dist. Rule 9.

⁵ See *post*, § 348; *In re Louisville Underwriters*, 134 U. S. 488; *Doe v. Springfield Boiler & Mfg. Co.*, 104 F. R. 684; *Reilly v. Phil. & R. R. Co.*, 109 F. R. 349; *Insurance Co. v. Leyland*, 139 F. R. 67.

⁶ *In re Louisville Underwriters*, 134 U. S. 488.

libel in suits by individuals, an information, or libel of information, in suits by the government. Libels on behalf of the government are not required to be sworn to. Other libels must be verified.⁷

§ 307. What it should Contain.

The libel is a statement of the case upon which the libellant founds his right to recover, closing with a prayer for the proper relief. It should contain, the address to the court, a statement of the names of the parties,⁸ the general nature of the suit, the facts which entitle the party to recover, a prayer for the relief which the party seeks, and for the process by which the adverse party or thing is to be brought before the courts.⁹

§ 308. Heading of the Libel.

The address to the court or to the judge of the court, if there be a single judge of the district, by his name and his official description, with which the libel should commence, is the same in libels of every class, and is as follows:

“To the District Court of the United States for the — District of —.”

or, where there is a single judge of the District:

“To the Honorable —, Judge of the District Court of the United States for the — District of —.”

The statement of the parties, and of the general nature of the action, varies according to the circumstances of each case. In libels *in rem*, the simplest form of heading is:

“The libel of A. B. against the ship Seabird, her tackle, apparel and furniture and against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows.”

⁷ Ad. Rule 1; Dist. Rule 1; Dunlap Prac. 111, 113; *Hutson v. Jordan, Ware*, 385. Where there are a large number of libellants, some of whom are outside of the jurisdiction, the libel may be signed and verified by their proctor, though the practice does not commend itself to the Ninth Circuit; *The Oregon*, 133 F. R. 609. Rule 1 of the District Court for the Southern District of New York allows a proctor to verify the libel for his client when the latter is without the United States or more than 100 miles from New York City.

⁸ See *Hardy v. Moore*, 4 F. R. 843.

⁹ Ad. Rule 23.

§ 309. Parties—Libellants—Joinder—Assigned Claim.

The party really entitled to the relief should always be made libellant, and all persons whose interests rest upon a cause of action common to all may join in one libel, though among themselves their interests are distinct.¹⁰ The practice of instituting a suit in the name of a person to whom the right has been transferred, does not obtain in admiralty,¹¹ though where libellant has an interest of his own, he may also prosecute the assigned claim of another, as thereby multiplicity of suits is avoided, the objection only going so far as to prohibit the prosecution of a claim by one who is really a stranger to it.¹²

Some officers of the United States are authorized to sue in their official name, although the suit be really for the benefit of the government. Misjoinder of parties libellant, when not objected to, will not prevent a decree.¹³

§ 310. Numerous Libellants—Salvage Libellants.

In cases of salvage, of violation of passenger agreements, and other cases in which many persons may concur in asking damages for the same general cause, although each man's claim depends upon its own circumstances, and he must recover upon his own case, it is the uniform practice for all to unite in the same suit.¹⁴ In such cases, it is not necessary that all should sign the libel, or all testify, or that the damages should be separately proved.¹⁵ In salvage cases, there is no objection to one or more salvors instituting the suit in their own names, for the benefit of all others, who shall come in and contribute to the suit, or shall be ascertained to be entitled to share in the salvage. This is, in a measure, necessary, from the very nature of a salvage service, which is one operation, claiming one reward, of which, however, each salvor is entitled to a share, always relative to that of the others and to the whole; and it is impossible

¹⁰ *Fretz v. Bull*, 53 U. S. (12 How.) 466; *The American Ins. Co. v. Johnson, Blatch. & H.* 9; *Jacobsen v. Dalles, P. & A. Nav. Co.*, 93 F. R. 975.

¹¹ *Minturn v. Alexandre*, 5 F. R. 117; *The Prussia*, 100 F. R. 484; *The Trader*, 129 F. R. 462.

¹² The court will not hear a suit brought by an assignee, where the assignment was made for the purpose of having a citizen plaintiff, and the court had already declined jurisdiction of the claim of the real party in interest: *Goldman v. Furness*, 101 F. R. 467.

¹³ *Coast Wrecking Co. v. Phoenix Ins. Co.*, 7 F. R. 236.

¹⁴ *The Prinz Georg*, 19 F. R. 653; *Sun M. I. Co. v. Miss. V. T. Co.*, 14 F. R. 699; *Jacobsen v. Dalles, P. & A. Nav. Co.*, 93 F. R. 975.

¹⁵ *The Oregon*, 133 F. R. 609.

that the court should properly ascertain any one man's share, without having the merits of all before it for definite adjudication.¹⁶ If only a part of the salvors are libellants before the court, the court should ascertain the amount of the whole salvage award, and decree their proper proportion thereof to the libellants in the cause.¹⁷

§ 311. Libellants in Suits for Wages.

In suits against a vessel for mariners' wages, in cases provided for by the act of Congress in relation to seamen in the merchant service, now § 4547 of the Revised Statutes, all the seamen having like cause of complaint are required to join in the same suit; and this too, although their cases are necessarily distinct, and each man must recover on his own contract and service, entirely independent of and without any relation to his fellows. This rule is imposed by the statute, and is supposed to have been established simply with a view to avoid unnecessary multiplicity of suits and accumulations of costs.¹⁸

§ 312. United States Cases.

In cases of seizure, the suit must be brought in the name of the United States, unless otherwise expressly provided by statute, in which case the provisions of the statute must be complied with.

§ 313. The Master or Owner may Libel for All.

The master's general agency for the owners and others interested in the adventure, and his special property in the ship and her cargo and freight, authorize him to bring, in his own name, actions which the owners and others interested may have in relation to the ship, her cargo, freight, and passengers.¹⁹ Such are prize cases, salvage cases, collision cases, average cases. Similarly, the owner may libel for himself and for the master and crew.²⁰ In such cases, the libellant should add, to his own name and description in the statement of the parties, a statement that he sues for himself and on behalf of others, as the case may be, naming and describing them.

¹⁶ *The Henry Ewbank*, 1 Sum. 400; *Stratton v. Jarvis*, 33 U. S. (8 Pet.) 4; *The Boston*, 1 Sum. 328; *The Edward Howard*, Newb. 522; *The Charles Henry*, 1 Ben. 8.

¹⁷ *The Lamington*, 80 F. R. 159.

¹⁸ Rev. Stat. § 4547.

¹⁹ *Disney v. Furness*, 79 F. R. 810; *Jacobsen v. Dalles, P. & A. Nav. Co.*, 93 F. R. 975.

²⁰ *The Flottbek*, 118 F. R. 954; *The Beaconfield*, 158 U. S. 303.

This is one of the advantages of the admiralty practice, inasmuch as, instead of the multiplicity of suits and circuitry of action which in the common law courts are often required, one plea, trial, and decree determine the whole controversy between all the parties to it.²¹

§ 314. Co-libellants.

Where a suit is brought in the name of one for the benefit of others, such others, if they prefer to appear directly for their own interests may, on petition, be allowed by the court to be joined as co-libellants.²² And in suits for seamen's wages other seamen claiming wages for the same voyage may also be made co-libellants in like manner.²³

Where a libel has been filed, and another party has a claim arising out of the same transaction, the proper practice is for him to present a petition to be made a co-libellant. This has been held in reference to seamen, to salvors, to owners of cargo damaged, and to insurers who had paid a loss, where a libel had been filed by the owner of the vessel or the carrier.²⁴ If parties file independent libels instead of coming in by petition, the court may mark its disapproval by its disposition of the question of costs.²⁵ But if in the first libel a stipulation has been substituted for the property, parties subsequently coming into court should consider whether it is sufficient security for their claims as well. If it were not so, independent libels would doubtless be held justified. See post, § 421.

§ 315. Married Women, Minors, etc.

All persons are presumed to have a right to sue in their own names, till the contrary appear. There are, however, certain exceptions to this rule coming under another general rule, that parties having no independent will or discretion must be represented in court by other persons, who are competent to act. Married women formerly prosecuted by their husbands or next friends, but now in their own name. Minors prosecute by their guardians, tutors, or next friends, lunatics and persons *non compotes mentis* by tutor, committee, or *guardian ad litem*. The estates of deceased persons are represented

²¹ The Commander in Chief, 68 U. S. (1 Wall.) 43.

²² The City of Paris, 1 Ben. 529.

²³ Dist. Rule 4.

²⁴ The Nahor, 9 F. R. 213.

²⁵ The Nahor, 9 F. R. 213.

by executors, administrators or other legal representatives.²⁶ See *post*, § 414.

§ 316. The Libellant Proceeds according to his Actual Right.

Courts of admiralty being in some degree international courts, it seems that in them parties are allowed to proceed by virtue of their right at the place of their domicil, in other words, that the party may proceed according to his actual right. If a married woman have a maritime right of action which, by law, she enjoys and may enforce in her own name without the consent or control of her husband, or against him as a party, she may sue in her own name in admiralty. If a party have any character as heir, executor, administrator, guardian, etc., in which he is entitled to sue by the law of his domicil, he may sue in that character in the admiralty here, by virtue of his character at home. When a party's right to sue as he does depends upon any character, office, duty or right, he should be so described in the libel as to show his right.

§ 317. Parties in the Libel—Defendants.

The libellant may, in one form or another, have his action against all persons and things to which he has a right to resort for relief. If there be a person or persons, corporation or corporations personally responsible to him, jointly or severally, in a maritime cause of action, he may proceed against them by a libel *in personam*. If they be only severally responsible, they must be sued separately; if they be only jointly responsible, they must be sued jointly. If, however, joint debtors be liable each for the whole debt, the libellant may properly institute his action against them all by a general description, naming specifically only those whose names are known to him, or those who are within the reach of the process of the court, and thus proceed to his decree against the parties thus brought in, or such as choose to appear, leaving them to seek the proper contribution from their associates not actually brought in. In a suit for freight money, where the libellant was in doubt as to whether charterer or consignee would be liable under the circumstances of the case, both were made parties defendant, and relief asked against the one who should prove

²⁶ Wood Civ. Law, 339; Consett's Prac. 50; 1 Brown Civ. Law, 139; Betts' Prac. 18; Plummer v. Webb, 4 Mason, 380; Emerson v. Howland, 1 id. 45; Plummer v. Webb, Ware, 75; Steele v. Thatcher, id. 91; The Etna, id. 462.

to be the party liable: and the court, on exception to the libel for misjoinder, sustained the suit.²⁷

If there be a thing or things, vessel, cargo, freight, merchandise or proceeds, against which the libellant has a maritime lien, or privilege, or right, no matter how acquired, he may enforce it by a libel *in rem*.

If the general owner, or the special owner,—i. e., one having a special property, a right of possession and control, as the master or charterer,—be, by virtue of his relation to the thing, personally responsible to the libellant for a demand which is a lien upon the thing, then the libellant may unite the two modes of proceeding, and may enforce his right by a libel *in personam* and *in rem*,²⁸ except where the admiralty rules otherwise provide. See *ante*, § 294.

§ 318. Parties Defendant.

Whomsoever and whatsoever the libellant proceeds against should be aptly and legally described early in his libel. A sufficient reason for this is found in the fact, that the real controversy is more quickly perceived, and the necessary facts are more readily and certainly arranged, if the general relations of the parties be first distinctly understood.

§ 319. Misjoinder.

If parties are improperly introduced, they may be struck out of the libel, on motion, or, more properly, the misjoinder may be made the subject of an exception to the libel; but misjoinder of parties libellant, when not objected to, will not prevent a decree.²⁹ The court will generally dismiss as to one party but retain the suit as to the other.³⁰

If new or further parties are found to be necessary, they may be added by a supplemental libel. See *post*, § 417. But objections to parties, or for want of proper parties, must be made in the court of original jurisdiction. Such objections cannot be raised for the first time in the appellate court.

§ 320. Statement of Parties and Property.

In the statement of the parties in libels *in personam*, the names,

²⁷ Neall v. Curran, 93 F. R. 831. See *post*, § 416.

²⁸ Brown v. Lull, 2 Sum. 443; Sheppard v. Taylor, 30 U. S. (5 Pet.) 675; Cutler v. Rae, 48 U. S. (7 How.) 729; The Brothers, 7 F. R. 878.

²⁹ Coast Wrecking Co. v. Phoenix Ins. Co., 7 F. R. 236.

³⁰ The Thomas P. Sheldon, 113 F. R. 779; The S. L. Watson, 118 F. R. 945, (same case on appeal); The San Rafael, 134 F. R. 749 and 141 F. R. 270.

occupations and places of residence of the parties should be stated, if they are known, and the fact that respondent was owner of the ship if the case is one of collision,³¹ and the corporate nature of parties;³² and in libels *in rem*, it should be stated that the property is within the district.³³

§ 321. Suits by Material-men.

In all suits by material-men for supplies, repairs, or other necessities, for a foreign ship, the libellant may proceed against the ship and freight *in rem*, or against the master or the owner alone, *in personam*. In the case of a domestic vessel only the proceeding *in personam* can be resorted to, unless the state law gives a lien enforceable in the admiralty, when the suit may be *in rem*. See Material Man, *ante*, § 196-198.

§ 322. Suits for Wages.

In all suits for mariners' wages, the libellant may proceed against the ship, freight and master, or against the ship and freight, or against the owner alone, or the master alone, *in personam*.³⁴

§ 323. Pilotage—Collision.

In all suits for pilotage, or for damage by collision, the libellant may proceed against the ship and master, or against the ship alone, or the owner alone, or the master alone, *in personam*.³⁵

§ 324. Assault.

In all suits for an assault and beating on the high seas, or elsewhere, within the admiralty and maritime jurisdiction, the suit must be *in personam* only.³⁶ But a passenger may have an action *in rem* for damages occasioned by an assault, the suit being founded, how-

³¹ The Corsair, 145 U. S. 335.

³² Sun M. I. Co. v. Miss. V. T. Co., 14 F. R. 699.

³³ Ad. Rule 23; The Bee, Ware, 332; Betts' Prac. 19. The Court acquires jurisdiction under seizure on alias process, though the vessel was not within the jurisdiction when the libel was filed; The Queen of the Pacific, 61 F. R. 213.

³⁴ Ad. Rule 13; The Citizens' Bank v. The Nantucket Steamboat Co., 2 Story's R. 16; Arthur v. The Cassius, id. 81; The Triune, 3 Hag. Ad. R. 114; The Merchant, Abb. Adm. 1.

³⁵ Ad. Rule 14, 15; The Hope, 1 W. Rob. 155; The Volant, id. 383; The Atlantic & Ogdensburgh, Newberry, 139; The Anne, 1 Mason, 508-512; Newell v. Norton, 70 U. S. (3 Wall.) 257; *vide* The Richard Doane, 2 Ben. 111.

³⁶ Ad. Rule 16.

ever, not directly on the tort, but on the violation of the passenger contract.³⁷

§ 325. Maritime Hypothecation.

In all suits founded on a maritime hypothecation of the ship or freight, express or implied, for moneys advanced to the master in a foreign port, to enable him to obtain supplies, repairs, or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem*, or against the master or the owner alone, *in personam*. In these cases, money is borrowed by the master on the responsibility of the owner, and the ship is mortgaged as security. The ship, the master, and the owner are all liable for the debt.³⁸

§ 326. Bottomry Bonds.

There are other cases, in which money is borrowed solely on the credit of the ship herself, in which marine interest is charged, and the money is put at the risk of the voyage and the safety of the ship. These are strict cases of bottomry; and in all suits on bottomry bonds, properly so called, the suit must be *in rem* only, against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has also bound himself personally in the bond, or unless some personal misconduct has raised a personal liability; as where the master has given the bottomry bond without authority, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct, or wrong, lost or subtracted the property, in which cases the suit may be *in personam*, against the wrong-doer.³⁹

§ 327. Salvage.

In suits for salvage, the suit may be *in rem*, against the property saved or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the service has been performed.⁴⁰

§ 328. Possessory and Petitory Suits.

In all possessory or petitory suits between part owners, or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship, for the ascertainment of the title and delivery

³⁷ The Western States, 159 F. R. 354.

³⁸ Ad. Rule 17.

³⁹ Ad. Rule 18.

⁴⁰ Ad. Rule 19. The Sabine, 101 U. S. 384, 388.

of the possession, or for the possession only, or by one or more part owners against the other, to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others, to obtain possession of the ship for any voyage upon giving security for the safe return thereof, the process must be by an arrest of the ship and by a monition to the adverse party to appear and make answer to the suit.⁴¹

§ 329. The Admiralty Rules as to Parties are not Exclusive.

It has been indicated above, § 294, that the Admiralty Rules which relate to the proper party to be proceeded against in certain cases, are not exclusive, and apply only to the particular causes of action specified in those rules. In other cases the libellant may proceed against any person or thing which is responsible for the libellant's cause of action, against the *res* when there is a maritime lien, against the person when there is a maritime cause of action without a lien, or against both when there is both lien and personal liability.

§ 330. Statement of the Nature of the Cause.

After the statement of the parties, and their residence, and, in suits *in rem*, the presence of the *res* within the district, the nature of the cause should be shortly stated to be *in a cause of contract, civil and maritime, or of tort or damage, civil and maritime, or of salvage, civil and maritime, or of possession, or of prize, or of forfeiture or penalty, civil and maritime*, as the case may be. The actions known to the civil law were classified in various modes, and the classes were almost as numerous as the transactions of men. That extreme classification is now considered unnecessary, and every civil cause of admiralty and maritime jurisdiction may be included in one or the other of the above classes.

§ 331. The Statement of the Cause of Action.

The libel must allege, in distinct articles, the various facts upon which the libellant relies to support his suit, so that the defendant can answer distinctly and separately, the several matters contained in each article.⁴² It is not enough to charge negligence and injury generally, but the facts showing the negligence and injury must

⁴¹ Ad. Rule 20.

⁴² *The Oscoda*, 66 F. R. 347; *The Cargo of the Joseph W. Brooks*, 122 F. R. 881; *Virginia, etc., Co. v. Sundberg*, 54 F. R. 389; *McWilliams v. The Vim*, 2 F. R. 874.

be alleged.⁴³ The amount claimed to be due should be stated, and it should be stated without unreasonable exaggeration. For the convenience of all parties, the articles should be numbered Article first, second, etc., in paragraphs, according to the subject-matter, of greater or less length, as the orderly statement of the cause of action may require.⁴⁴ This statement should contain every fact necessary to give the court jurisdiction, and to entitle the libellant to the remedy or relief which he seeks, and it should contain nothing else.⁴⁵ The statements of fact may be more or less detailed and amplified according to the taste of the pleader, but simplicity, compactness, orderly arrangement, and logical accuracy, in the common narrative style, are the perfection of pleading in admiralty; and the court properly discourages voluminous and involved statements, repetitions, exaggerated and cumulative epithets, which formerly were not unknown in pleadings.⁴⁶

§ 332. Joinder of Causes of Action.

In suits *in personam*, the libellant may join in the same libel any number of causes of action, whether of contract or tort, between the same parties. This is another advantage of the admiralty course of proceeding, which the different forms of action, the different forms of pleas, the different modes of trial, and the different kinds of judgments and executions in common law proceedings, all having their technical niceties, render impracticable in common law courts.

In like manner, if the suit be *in rem*, the libellant may join, in the same libel, any number of demands against the thing; indeed, he *must* do so, inasmuch as he could hardly be permitted again to attach the thing in the innocent hands of a purchaser at his own sale. Each separate cause of action should be set forth in a distinct and orderly manner in a separate article.⁴⁷

§ 333. Statement of Rights of Separate Libellants.

In cases in which one party sues for himself and others, the stating

⁴³ *Jacobsen v. Dalles, P. & A. Nav. Co.*, 93 F. R. 975.

⁴⁴ Ad. Rule 23; *The Bee, Ware*, 332; *The Boston*, 1 Sum. 328; *The Graces*, 8 Jur. 501; *Hutson v. Jordan, Ware*, 385; Ad. Rule 27; *The Vim*, 2 F. R. 874.

⁴⁵ *The Boston*, 1 Sum. 332; *The Sarah Ann*, 2 id. 206; *McKinlay v. Moorish*, 62 U. S. (21 How.) 343; *Dunwody v. The Campbell*, 106 F. R. 542.

⁴⁶ *The Towan*, 8 Jur. 222; *The Matchless*, 1 Hag. Ad. R. 97; *Captures on the Jamaica Station*, id. 131; *Conk. Treat.* 2d ed. 353; *The Hoppet v. The U. S.*, 11 U. S. (7 Cranch), 389; *Betts' Prac.* 19; *Thomas v. Lane*, 2 Sum. 1; *Conk. Ad.* 419.

⁴⁷ *Treadwell v. Joseph*, 1 Sum. 390; *Rich v. Lambert*, 12 How. 347; *Minturn v. Alexandre*, 5 F. R. 117; *The Anchoria*, 9 F. R. 840; *Sun Co. v. Mississippi Co.*, 14 F. R. 699; *The Queen of the Pacific*, 61 F. R. 213.

part of the libel should contain facts to show that others are entitled, and who they are, and how they are entitled; and wherever several parties are joined, and the rights of the parties are distinct, separate and independent, each libellant's case should be stated in an article by itself, not only with a view to the convenience of the opposite party and of the court, but also because, in such cases, the right to appeal is the individual right of each party, and the final decree should be for or against each individual, by name, and, so far as he is concerned, confined to him. In practice, this is often neglected, and, in case of several parties, a general joint libel and answer are put in, and a general decree made, which leads to embarrassment and needless expense, in case of an appeal by some, and not all the parties, or of separate appeals by all.⁴⁸

§ 334. Statement of Amount claimed.

The libel should contain a distinct statement of the amount claimed, with common accuracy and truth, and damages not claimed cannot be proved.⁴⁹ The court disapproves of actions being entered in an amount disproportioned to any reasonable estimate of the amount justly recoverable; and, when that seems to have been done for any sinister purpose, will sometimes manifest its displeasure in disposing of the question of costs.

The court is not, however, bound by the amount of damages claimed in the libel. When it appears on investigation, that the libellant has merits, and that justice requires a larger remuneration than he has demanded in his libel, the court is not precluded by any technical forms from doing full justice. Sir William Scott, in a case of salvage, when the libellant claimed £800, gave £2,100, notwithstanding the objection was made. The whole matter, said he, is before the court; and I think the court is by no means limited by any particular demand.⁵⁰ It is usual, however, in such a case, to direct the libel to be amended, so as to make claim for the larger amount.⁵¹ And a decree against stipulators can not exceed the amount of their stipulation, unless on their default or contumacy.⁵² See *post*, § 433.

⁴⁸ *Sheppard v. Taylor*, 30 U. S. (5 Pet.) 675; *Oliver v. Alexander*, 31 U. S. (6 Pet.) 143; *The Henry Ewbank*, 1 Sum. 400; *The Anchoria*, 9 F. R. 840.

⁴⁹ *Harrison v. Hughes*, 119 F. R. 997.

⁵⁰ *The Graces*, 8 Jur. 501; *Pratt v. Thomas, Ware*, 427; *The Jonge Bastiaan*, 5 Rob. 287; *Olivari v. T. M. Co.*, 37 F. R. 894.

⁵¹ *The Webb*, 81 U. S. (14 Wall.) 406.

⁵² *The Wanata*, 95 U. S. 600. The fact that the decree is in excess of the penalty of the bond merely nullifies the part so in excess; *Munks v. Jackson*, 66 F. R. 571.

§ 335. Place of Seizure.

In cases of seizure for a breach of the laws of revenue, or navigation, or other laws of the United States, the information or libel must state the place of seizure, whether it be on land, or on the high seas, or on other navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The libel must also propound, in distinct articles, the matters relied on as grounds, or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case made and provided, as the case may require.⁵³

It is sufficient to describe the offence in the words of the statute, provided it be so described that, if the allegation be true, the case must be within the law. It is, in no case, necessary to state any fact which is only matter of defence to the claimant, or to negative exceptions, which are introduced by way of proviso, or by subsequent statutes.⁵⁴

§ 336. Statement as to Defendant's Credits, etc.

If the libellant desires to have his process contain a clause to attach the credits and effects of the defendant, in case he cannot be found, there should be inserted in the libel a statement that the defendant has credits and effects in the hands of one or more persons, who should be named therein. This is necessary to enable the marshal to summon the garnishee.⁵⁵ See *post*, § 353.

§ 337. Libel must State a Case within the Jurisdiction.

The judicial power of the United States being limited, the courts of the United States are of limited jurisdiction, limited by the grant of judicial power in the constitution, and limited by the acts of Congress distributing that jurisdiction to the courts. Their action extends, and must be confined to the cases, controversies, and parties over which both the constitution and the laws have authorized them to

⁵³ Ad. Rule 22; *The U. S. v. Hayward*, 2 Gal. 485, 497; *Cargo of the Aurora v. The U. S.*, 11 U. S. (7 Cranch), 382; *The Hoppet v. The U. S.*, id. 389; *The Caroline v. The U. S.*, id. 496; *The Anne v. The U. S.*, id. 570; *The Samuel*, 14 U. S. (1 Wheat.) 9; *The Mary Ann*, 21 U. S. (8 Wheat.) 380; *The Emily*, 22 U. S. (9 Wheat.) 381; *The Merino, etc.*, id. 391.

⁵⁴ *The Samuel*, 14 U. S. (1 Wheat.) 9; *The Mary Ann*, 21 U. S. (8 Wheat.) 380; *The Emily*, 22 U. S. (9 Wheat.) 381; *The Merino, etc.*, id. 391; *Cargo of the Aurora v. The U. S.*, 11 U. S. (7 Cranch), 382; *The U. S. v. Hayward*, 2 Gal. 485, 497.

⁵⁵ Ad. Rule 2, 37.

act. It is therefore a cardinal rule, that the libel must, on its face, state a case which is within the jurisdiction of the court. It is not enough, nor is it at all necessary to make the general statement that the case is within the jurisdiction, but the facts necessary to give jurisdiction must be set forth in the libel. In practice, however, the stating part of the libel usually closes with a general averment that the facts are true, and within the jurisdiction of the court.

§ 338. *The Prayer of the Libel.*

After the stating part of the libel, follows the prayer for the proper process to enforce the rights of the libellant by bringing the party, or the property defendant, before the court, and for such relief and redress as the court is competent to give in the premises.⁶⁶ If the suit be *in personam* alone, the process and the relief must be merely personal. If the suit be *in rem* alone, the process and the relief are confined to the thing, and no person is under any legal obligation to appear and defend the suit, or will incur any personal liability by neglecting to do so. If the suit be *in personam* and *in rem*, then the prayer is for a process, which will bring before the court both the person and the thing, for adjudication in the matter of the libel.

If the suit be *in personam* alone, the libellant may pray for a simple citation, in the nature of a summons to the respondent to appear and answer to the suit; or, in cases where the law permits an arrest, for a warrant of arrest in the nature of a *capias*; or, for a warrant of arrest or a simple citation with a clause therein, if the defendant cannot be found, to attach his goods and chattels to the amount sued for or if such property cannot be found, to attach his credits and effects to the amount sued for, in the hands of garnishees, and to summon the garnishees to appear and answer, on oath or solemn affirmation, as to the debts, credits, and effects of the defendant in their hands; and, in all cases, for sworn answer by the defendant to the allegations of the libel, and to such interrogatories touching the allegations of the libel as may be propounded by the libellant. If the suit be *in rem*, the process prayed for, unless otherwise provided by statute, must be a warrant of attachment of the thing itself, and a monition to all persons interested to appear by a day certain and intervene for their interest.⁶⁷

Immediately after the prayer for process, follows the prayer for

⁶⁶ See *The J. P. Donaldson*, 21 F. R. 671.

⁶⁷ Ad. Rule 2, §, 37.

the specific and general relief which the libellant desires; in suits *in rem*, that the property may be condemned and sold to pay the demand of the libellant stated in the libel; or that the vessel may be decreed to belong to the libellant; or be delivered to him; or forfeited to the United States in a suit by the Government; as the case may be and according to the relief to which the party may be entitled; or, in suits *in personam*, that the respondent may be decreed to pay the debt or damages claimed by the libellants; and in all cases, that the defendant may be condemned to pay the costs. In cases which are both *in rem* and *in personam*, both forms of prayer are joined.⁵⁸

§ 339. Interrogatories.

If the libellant desire to address himself to the conscience of the defendant, and to compel him to give testimony as to the matters in controversy, he may close his libel with interrogatories, touching all and singular the allegations in the libel, and demand that the defendant answer them on oath.⁵⁹ The practice of thus inserting proper interrogatories tends greatly to the promotion of justice, and its prompt and economical administration, by reducing to the narrowest compass that portion of the cause which is to occupy the time of the judge and the witnesses in court. See more particularly as to Interrogatories, *post* §§ 401 and 440.

§ 340. Libel of Review.

In general, a court of admiralty has no power to alter its decree after the term at which the decree was entered.⁶⁰ But where a party discovers that the decree has been inadvertently and improperly entered; or that a decree has been made although he has had no proper notice of the suit and has thereby been deprived of property; or where there has been fraud of any kind in the suit; and the time to appeal has gone by and the term has closed, so that no regular remedy is left him, he may obtain redress by filing a libel of review.⁶¹ This is a libel or

⁵⁸ *Vide* form, Appendix p. 581.

⁵⁹ Ad. Rules 23, 37. The interrogatories must be at the close of the libel. If a libel is filed without interrogatories, and it is then desired to add them, the proper practice is to amend the libel and place the interrogatories at the close of the amended libel; *The Edwin Baxter*, 32 F. R. 296.

⁶⁰ *The Martha*, Blatch. & H. 151; *Snow v. Edwards*, 2 Low. 273; *Pettit v. One Steel Lighter*, 104 F. R. 1002. *Post*, § 475.

⁶¹ *The New England*, 3 Sumner 495; *Janvrin v. Smith*, 1 Sprague, 13; *Snow v. Edwards*, 2 Low. 273; *Car Co. v. Hopkins*, 4 Biss. 41; *The Sparkle*, 7 Ben. 528; *Jackson v. Munks*, 58 F. R. 596, *aff'd* 66 F. R. 571; *The Columbia*, 100 F. R. 890; *Hall v. Chisholm*, 117 F. R. 807.

petition, setting forth the facts whereby the party deems himself entitled to redress, and the procedure on filing it is the same as on an ordinary libel. Process *in personam* against the parties to the original suit, or either of them, will issue, but when property has been duly sold in the original suit, it is doubtful if process *in rem* will be issued without indemnity. It should never issue without special order of the court. The subsequent proceedings will be the same as in any suit, and the decree of the court will be such as equity demands.

CHAPTER XXII.

COMMENCEMENT OF THE SUIT—MESNE PROCESS.

§ 341. Security for Costs.

The filing of the libel is the commencement of the suit.¹ Before being filed, the libel should be signed by the party or his agent, and by his proctor, and verified by oath.² It is usually signed by an advocate, but this is not necessary. It must be filed in the clerk's office from which the process is to issue, before the mesne process can be issued.³

The District Courts, in their own rules, provide in what cases and in what amounts security shall be given for costs, by the libellant, before commencing the suit. This is usually given by *stipulation*, which is the proper name for an undertaking of security in admiralty, and not by bond under seal, although there is no legal objection to its being in the form of a bond. A stipulation with surety for costs, is required in the New York Districts in all cases, except those of seamen prosecuting for mariners' wages on board of American vessels, salvors in possession, petitioners for money in the registry of court, the city of New York and those who sue *in forma pauperis*.⁴ In suits *in personam* the amount of the stipulation is \$100, *in rem*, \$250.

These stipulations being undertakings in court, they are often prepared by the clerk, and executed and acknowledged before him, but there is no objection to their being prepared by the proctor, and acknowledged before any United States commissioner, or the judge or a notary public. The latter is the more common practice in the Southern District of New York. Stipulations must be executed by the principal party, if within the district, and at least one resident surety. Non-resident parties must supply two sureties,⁵ and process will not

¹ Premature filing of the libel is not necessarily ground for its dismissal, but affects the question of costs; *Clark v. Lumber*, 65 F. R. 236.

² *Hardy v. Moore*, 4 F. R. 843.

³ Ad. Rule 1.

⁴ Dist. Rule 7. See chap. 209 of U. S. Stat. of 1892.

⁵ D. C. Rule 21.

be issued for a non-resident on a stipulation containing but one surety. The surety must justify as bail, by a written affidavit on the stipulation, that he is a resident, and worth twice the amount of his stipulation over and above his debts.*

§ 342. Issuing Process.

On filing the libel and the stipulation for costs, the process prayed for is issued by the clerk to the marshal as a matter of course, in suits *in rem*, in suits where a simple citation to the respondent is asked for, and in suits *in personam* praying for an attachment under \$500.

§ 343. Order for Process.

In suits *in personam*, where the claim is for more than \$500, and it is desired to arrest the respondent or attach his property, process does not issue as of course, but there must be a special order of the court therefor, upon affidavit or other proofs showing the propriety of issuing it.⁷ The order of the court is usually indorsed informally on the libel in this form: in case of an attachment of property—"Let process of attachment issue as prayed for";—and in cases of arrest as follows:

"On filing the within libel, and otherwise complying with the rules of the court, let a warrant of arrest issue in this cause against the respondent (naming him), and let him be held to bail in dollars."
(Signed by the Judge.)

In such cases, on filing the libel and obtaining the order of the court, the clerk issues the process and, when an arrest is sought, endorses on the libel the amount in which the marshal must take bail.

The process of arrest of the person is now very rarely used, though there is no doubt that the court still possesses the power to issue it. But special and good cause would have to be shown before it would be ordered.

The libel being prepared, let it be signed and sworn to by the libellant, or, in case of his absence by his agent or attorney, before the Judge, or the Clerk, or a United States Commissioner, or a Notary Public, and signed also by the Proctor.

Prepare the stipulation, and have it executed, acknowledged and justified.

* *Hutson v. Jordan*, Ware, 385; *Pratt v. Thomas*, id. 427; *Martin v. Walker*, Abb. Adm. 579; Ad. Rule 1, 5, 38; D. C. Rule 21, 22.

⁷ Ad. Rule 7.

If the libel be in personam and pray for an arrest or attachment, and the amount claimed is over \$500, apply to the Judge for an order that a warrant of arrest or an order of attachment may issue. File the libel and stipulation for costs, and direct the Clerk to issue the process or warrant, and if bail can be taken, to mark it for bail. See to it that the process is placed in the Marshal's possession, and give him information as to where the property may be found, or where the respondent resides, or has his place of business.

§ 344. Issuing and Serving Process.

Jurisdiction of the subject matter in a proper case is obtained by the court on the filing of the libel: but except in cases of voluntary appearance, jurisdiction of the person of the defendant, or of the *res*, is obtained by service of the process of the court.⁸ The process issues in the name of the President of the United States, is directed to the marshal of the district, is tested in the name of the judge of the court, and must be under the seal of the court.⁹ Process issued by an unauthorized person is void and the marshal has no right to attach thereunder.¹⁰ Process must be served by the marshal or his deputy, unless he be interested, in which case, the court, on application *ex parte*, showing the interest, will appoint a disinterested person, to whom the process will be directed, and by whom it will be served and returned.¹¹

§ 345. Return Day.

The court is always open for the test (or formal signing) and return of process, as has been stated; but the convenience of the court, as well as of the officers and suitors, has induced each court, by its rules, to appoint certain general return days. In the Southern District of New York every Tuesday is a general return day. All admiralty mesne process is tested on the day it is issued. In the Southern District of New York, process *in personam* is returnable at the next general return day: process *in rem* requires fourteen days to elapse after it has been issued, and is returnable at the next general return day after the expiration of such fourteen days. In the Eastern District of New York, process both *in rem* and *in personam* requires six days to elapse before it is returnable, and it is returned at the next

⁸ *Cooper v. Reynolds*, 10 Wall. 308; *Pacific Coast S. S. Co. v. Bancroft-Whitney Co.*, 94 F. R. 180.

⁹ Rev. Stat. § 911.

¹⁰ *Ker v. Bryan*, 163 F. R. 233.

¹¹ Ad. Rule 1; Rev. Stat. § 922.

general return day after the expiration of six days from the day of its issue. The time intervening between the issue and return of process is provided for, in order to enable notice to be received by interested parties, and opportunity given them to appear on the return of the process.

§ 346. An Error in Process may be Corrected.

The proper order and conduct of legal proceedings demands that the process of the court should be prepared with care and correctness, according to the rules and practice of the court, but in this matter, as in every other in admiralty, the ends of justice are the paramount consideration, and common law technicalities of process are unknown. Any error, mistake, or oversight will, therefore, be corrected by the court, on application, always on such terms as may be just, and as matter of course when the party has not been prejudiced.¹² The issuing of the process being the act of the clerk, the party or his proctor is not responsible for its imperfections.

§ 347. Form of Process.

These forms will be found in the Appendix, pp. 604-611.

§ 348. Service of Monition.

If the process be a simple monition or summons to appear and answer to the suit, it is the duty of the marshal forthwith to serve it on the defendant, by delivering to him personally a copy thereof.¹³ It is a very useful measure of precaution, on the part of the marshal, to ask the defendant to sign on the back of the process his acknowledgment of the service; but if he omit to do so, the service will be good, and in either case the marshal returns the process to the clerk's office, with his return endorsed upon it, "*Personally served.*"

(Signed by the marshal.)

§ 349. Service of Warrant of Arrest.

It has been remarked that this practice is very rare, at least in the

¹² Rev. Stat. § 954.

¹³ Walker v. Hughes, 132 F. R. 885. In case of cross libel, the process may be served on the proctor for the original libellant; Cargo ex Eliza Lines, 61 F. R. 308. Process may be served on a foreign steamship company, which has within the district no officer or agent expressly authorized to receive service, by delivering it to the financial agent of the company at his office; In re Hohorst, 150 U. S. 653. Service *in personam* may be made on the agent of a non-resident respondent; In re Louisville Underwriters, 134 U. S. 488; Doe v. Springfield Boiler Co., 104 F. R. 684; Insurance Co. v. Leyland, 139 F. R. 67. It may be made on the party who represented the owner in chartering a vessel to the government and in the prosecution of a claim; U. S. v. Bedouin S. S. Co., 167 F. R. 863.

New York Districts. Nevertheless, where an arrest is prayed for and ordered by the court, it is the duty of the marshal immediately to arrest the respondent and keep him in custody, unless, in a case in which the marshal may take bail, the respondent give bail, with sufficient sureties, by bond or stipulation, with condition that he will appear in the suit and abide by all the orders of the court, interlocutory or final, and pay the money awarded by the final decree rendered therein, in the court to which the process is returnable or in any appellate court.¹⁴ The bond on arrest may be given to the court, as well as to the marshal.

It is the duty of the marshal, if he takes the bail, to see that the sureties are sufficient, and that the stipulation is duly made and executed, inasmuch as the libellant is not consulted, and has no power to meddle with the duty of the marshal in the premises, who acts under the proper responsibility of his office. See *post*, § 435.

The marshal returns the process to the clerk's office, with his true return endorsed upon it, and with the stipulation, if any, which he has taken. A form of bail on arrest will be found in the Appendix, pp. 618, 619.

§ 350. Arrest of the Person—Imprisonment for Debt.

The author of this work, writing in 1850, questioned the wisdom of the abolishment by Congress of imprisonment for debt, and picturesquely asked "what security could there be for the merchant in shipping, or the consignee in receiving his goods, the pilot, the lighterman, the wharfinger, the sailor, the material-man, compelled to give credit, by public as well as private interests and by the invincible necessities of maritime commerce, to transient persons, whose characters are unknown, whose residences are inaccessible, and who, on being sued without arrest, would find a substantial defence in a fair wind and an open sea?"

Circumstances have not justified the author's fears, for though arrest, both on mesne process and on execution, is almost unknown to the admiralty, there are not many courts whose records can show so few unsatisfied judgments, the fact being due, no doubt, to the facility of attaching property, though attachment of the person, or arrest, has been practically dispensed with.

The right to arrest, however, still exists in the admiralty in certain cases. Sections 990 to 992 of the Revised Statutes confine the right to arrest and imprison a debtor on process issuing from any court of

¹⁴ Ad. Rule 3; *post*, § 438; *Lane v. Townsend*, Ware, 289.

the United States to the cases where the debtor might be arrested on process out of the State Court, and conform the practice as to arrest, imprisonment and discharge to the practice of the State Courts. The practice of the State Courts in such cases being so varied, the subject is one which cannot be treated of here *in extenso*, and the practitioner in each state must look to its laws to ascertain whether he may or may not obtain a warrant of arrest against a defendant either on commencing a suit, or on execution to satisfy a decree already obtained. District Rule 9 of the Southern District of New York, provides that one of the forms of process to be used in commencing suit shall be a warrant of arrest of the person, upon the special order of the Court, in cases allowed by law, either alone or united with an attachment. This provision refers to an arrest in cases where an arrest may be had under the State laws.

§ 351. Arrest of the Person on Mesne Process.

The second Admiralty Rule provides that in suits *in personam* the mesne process shall be by a simple warrant of arrest of the person of the defendant, in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein that if he cannot be found, to attach his goods and chattels to the amount sued for, or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein. The courts of different districts have held variously in regard to this provision, influenced, apparently, by the state court practice of the different districts. The District Court for the Southern District of New York, in two early cases¹⁵ held that the statutory provisions abolishing imprisonment for debt did not apply to the admiralty courts. Rule 9 of that court provides that one of the kinds of process used in commencing suits shall be a warrant of arrest of the person, upon the special order of the court, in cases allowed by law, either alone or united with an attachment.

In *Chiesa v. Conover*,¹⁶ a case in the Southern District of Alabama, it was held that a warrant of attachment could be issued only in cases where a warrant of arrest would issue, which for any reason could not be executed: and as arrest had been abolished in Alabama, an attachment of the goods of a foreign debtor found in the jurisdiction could not be had. In *The Bremena v. Card*,¹⁷ the District Court for the

¹⁵ *Gaines v. Travis*, Fed. Cas. 5180; *Gardner v. Isaacson*, Id. 5230.

¹⁶ *Chiesa v. Conover*, 36 F. R. 334.

¹⁷ *The Bremena v. Card*, 38 F. R. 144.

District of South Carolina held the same. In *The Carolina*,¹⁸ the court vacated an order of arrest made in an action to recover damages for assault and battery on the high seas, on the ground that an arrest in admiralty could only be had where the laws of the state within which the court was situated (Louisiana,) allowed arrest, and by those laws there could be no arrest on mesne process except in the case of an absconding debtor. But in *Bolden v. Jensen*,¹⁹ the District Court for the District of Washington, N. D., held that the abolishment of imprisonment for "debt" did not abolish arrest for other causes than debt, *e. g.*, a cause of personal injury and cruelty to a seaman. So had the court held in 1871, in *Hanson v. Fowle*,²⁰ a decision of the District Court for the District of Oregon, which latter district evidently was of the same opinion in 1898, as shown by the case of *Stone v. Murphy*,²¹ (in which case the defendant was arrested), the holding of the case being that his release bond could only be exacted to the effect of rendering the defendant amenable to the process of the court, and not to pay the decree.

The result of the summing up of the cases seems to be that arrest in admiralty on mesne process may always be had if an arrest would issue out of a State Court on the same facts: arrest may also be had in an admiralty cause sounding in tort, upon the special order of the judge. Arrest may not be had in ordinary cases on contract. And where a judgment debtor can be arrested on an execution, he has all the rights and privileges which a judgment debtor in a state court would have. The application for arrest must in general follow the state practice, but it is not to be supposed that the technicalities and particularities of the state court practice would be demanded by the court, either on its consideration of the right to arrest or an application to vacate the warrant.

§ 352. Attachment of Property in Suits in Personam—Foreign Attachment. I.

Admiralty Rule 2 provides that in suits *in personam* the process may be by simple warrant of arrest of the person of the defendant, or by simple monition in the nature of a summons to appear and answer: or, by a warrant of arrest with a clause to attach the defendant's goods if he cannot be found: or if his goods cannot be found, to attach his

¹⁸ *The Carolina*, 14 F. R. 424.

¹⁹ *Bolden v. Jensen*, 69 F. R. 745.

²⁰ *Hanson v. Fowle*, 1 Sawy. 497, Fed. Cas. 6041.

²¹ *Stone v. Murphy*, 86 F. R. 158. See *Grace v. Evans*, 3 Ben. 479.

credits and effects in the hands of garnishees. Rule 9 of the District Courts for the New York districts apparently separates the above attachment provisions, and draws a distinction between foreign attachments and what are called in some jurisdictions domestic attachments, the latter issuing where the defendant is a resident, but has absconded, or evades process, or cannot be found at his customary places; and the former, or foreign attachment, issuing where the defendant is a non-resident and naturally cannot be found for the purpose of service, or for some other honest reason cannot be found, but has goods and chattles or credits and effects within the jurisdiction, by the attachment of which his appearance to defend the suit can be compelled.²² The latter corresponds to the ordinary State court practice of attachment in cases of defendant's fraud or evasion; foreign attachment to the practice of attachment in cases of defendant's non-residence. It is not, however, meant to say that foreign attachment issues *only* against non-resident defendants: it may issue against residents also, the sole requisite for its issuing lying in the fact that the defendant *be not found* within the district. Either form of attachment can issue only on the special order of the court, founded upon affidavit or other proof by the libellant of the circumstances of the defendant's fraud, evasion or non-residence, and the necessary fact that he cannot be found within the district; in case of a claim for liquidated damages under \$500, the process is issued as of course by the clerk.

Therefore, in the cases in which attachment of the goods and chattels of a resident defendant is sought, or in the rare cases where libellant believes himself entitled to a warrant for the arrest of the person of the defendant, the libel should be accompanied by an affidavit, setting forth fully the facts of the defendant's fraud, or absconding, or evasion of process, and when the State Court practice gives the right of arrest or attachment in such cases, it is well, though not essential, in drawing the affidavit, to follow closely the State practice. In cases of defendant's non-residence, where a foreign attachment is sought, a simple affidavit of the fact of such non-residence and the fact that he cannot be found within the district, or even the sworn allegations of the libel, without separate affidavit, will be sufficient, when coupled with the averment that the defendant has goods and chattels or credits and effects within the jurisdiction, and with the specification, if possible, of what goods and chattels he has, and the

²² *Atkins v. Fibre Disintegrating Co.*, 1 Ben. 118, 85 U. S. (18 Wall.) 272; *Cushing v. Laird*, 4 Ben. 70, 107 U. S. 69; Ad. Rules 2, 3, 4; D. C. Rule 9.

names and residences of parties who are believed to hold his credits and effects as garnishees. On such sworn allegations, the court will issue its order that process of foreign attachment issue.

§ 353. Foreign Attachment. II.

If the warrant of arrest or monition contain a clause, that if the defendant cannot be found, his goods and chattels to the amount sued for be attached, or if such goods and property cannot be found, his credits and effects to the amount sued for, in the hands of the garnishee named in the process, be attached—in such case, the process should direct that the garnishee, upon whom the attachment is to be served, be summoned to appear and answer the interrogatories addressed to him in the libel. The word garnishee means one who is warned, i. e., called upon to make good his title to certain property.

§ 354. Service of Process of Foreign Attachment.

Under such a process, it is the duty of the marshal to arrest the party, or serve him if he can be found in his district, and he has no right to attach goods, chattels, debts, credits, or effects, before he has endeavored to find the party himself. But inasmuch as the right to attach property will immediately be lost by the defendant's appearing, the marshal should not, by devoting time to a fruitless search for the defendant, lose the opportunity of attaching his property. If, therefore, the party be not found at his usual place of business or abode, the marshal should proceed to make the attachment. But there must be fair dealing on the part of the libellant, and it will not do to direct the marshal to the defendant's residence or place of business at a time when it is known that he is temporarily absent: or to delay the issuing of process for the sole purpose of securing an attachment when it is known the defendant can be served personally.²³ And the defendant can always prevent the attaching by appearing at any time before the attachment is made: after it is once made, however, his appearance does not discharge it, and it can be discharged only by giving security, as indicated below. The marshal should attach the goods and chattels of the defendant, if they can be found, to the amount sued for: and if they cannot be found, then he should attach the debts, credits and effects of the defendant, in the hands of the garnishee named in the process, to the amount sued for, and summon the garn-

²³ *Provost v. Pidgeon*, 9 F. R. 409; *Shewan v. Hallenbeck*, 150 F. R. 231. If defendant is served personally, the marshal cannot also attach goods. See *Grace v. Evans*, 3 Ben. 479.

property, or the facts as to the debt sought to be attached: in the Southern District of New York the latter is the usual practice.

On default of one summoned as garnishee, the libellant is not entitled, under Admiralty Rule 37, to compulsory process *in personam* against him. Such process issues only to compel an answer. But after default, the garnishee cannot put in an answer, as a matter of right, except to state facts which have occurred since the default. And if the libellant can satisfy the court, by affidavits, that the garnishee has debts, effects, or credits in his hands, he may have execution against them, if no answer has been given.³⁰

§ 358. Attachment of Real Estate.

It will be noticed that only an attachment upon "goods, chattels, debts, credits or effects" is spoken of in the admiralty rules. There seems to be some question as to whether real estate also can be attached.

Remembering that the object of an attachment in admiralty is to compel the appearance of the defendant there seems no reason why this should not be done by an attachment of his lands as well as by that of his goods.³¹

In Massachusetts the original process of attachment formerly ran against lands, as is stated by Dunlap in his book on Practice, p. 138.³² He says that in England the process of the admiralty did not run against lands, citing as proof 2 Brown's Civil Law, p. 410, where, however, the author is speaking not of the process of attachment, but of the liability of stipulators under their stipulation. Still there is no doubt that Clerke's Praxis and other ancient books of practice do not speak of attaching lands. But it may easily be that that was only because the occasion for it had never arisen. Stipulations given in the Southern and Eastern Districts of New York under the rules of those courts have always required stipulators to consent that, in case of default, execution may issue against their lands as well as against their goods and chattels.³³ If the District Courts have power to make such a rule as to stipulations, they would appear to have the same power over real estate on attachments.³⁴

³⁰ McDonald v. Reynolds, 11 Law Rep. N. S. 157; Shorey v. Rennell, 407.

³¹ But see Louisiana Ins. Co. v. Nickerson, 2 Low. 310.

³² The reference which Dunlap makes to "Stone's Cases" as his authority, is a reference not to a book but to a suit of that name brought before the Massachusetts Court, not reported.

³³ D. C. Rule 21; see The Belgenland, 108 U. S. 153.

³⁴ In Harriman v. Rockaway Beach Co., 5 F. R. 461, the marshal attached

The hesitation of the admiralty court to attach lands has arisen probably from an undefined idea that the jurisdiction of the court lies over the sea and not the land, which latter is peculiarly subject to the common law. There is no reason for such idea. The land is not to be attached as land, but as property of the defendant within the district where the power of the court extends. And for such purpose land is not different from other kinds of property with which the court of admiralty is more often concerned.

§ 359. Attachment in Suits in Rem.

If the suit be *in rem*, it is, in substance, a suit against all persons having any interest in the thing, to the extent of their interest in it. All the world are said to be parties to such a suit, and are bound by the decree, so far as the property proceeded against is concerned, and may intervene and make themselves actual and nominal parties to it, and bring their rights before the court. The process issued is a warrant to attach the property and, in the case of a vessel, covers not only the hull, but also rigging and sails, even if the latter have been taken ashore.³⁵ The process usually contains, also, a monition to all persons interested, to appear on a day certain, and show cause why the property should not be condemned and sold, to satisfy the demand of the libellant. On such a process, it is the duty of the marshal to attach the property described in the writ, and safely keep it subject to the order and decree of the court, and also, to give public notice of the arrest, and of the time assigned for the return of the process and the hearing of the cause. This must be given in such newspaper in the district as the District court shall order. And if there be no newspaper published therein, then in such other public places in the district as the court shall direct. On the return day of the process, the marshal must return the same into court, with his return endorsed thereon, stating what he has done under the writ.³⁶ He has no right, on the arrest of property *in rem*, to take any bail for the property, except the bond to the marshal referred to in § 435, but he must retain it specifically, and he is responsible for its proper

an iron pier. The court set the seizure aside on the ground that the process only allowed the marshal to attach "goods and chattels" of the defendant, and that an iron pier was not goods or chattels. The court expressly refrained from deciding whether the court could attach real property on mesne process.

³⁵ See *The Schooner George Prescott*, 1 Ben. 1.

³⁶ But his statement in the return as to the place of seizure is not conclusive as to jurisdiction; *The Lindrup*, 70 F. R. 718.

custody. For the purpose of detention and security, the marshal may, if necessary, take off the sails of a vessel, or her rudder, or anchors, so that she cannot escape.³⁷

If there be several parties having demands against the thing, each party brings his separate suit and issues his process, which it is the duty of the marshal to serve and return as though it were the only process, and it is for the court, upon the hearing, to determine the order in which the parties are to be paid.³⁸ But when a vessel is once in the marshal's possession under process, the mere receipt by the marshal of a warrant of attachment in another suit is a constructive seizure in the latter suit.³⁹

§ 360. Notice in Suits in Rem. I.

In cases of seizure under the revenue laws, the court must cause fourteen days' notice to be given of the seizure and libel, by causing the substance of the libel with the order of the court therein, and the time and place appointed for trial, to be inserted in some newspaper published near the place of seizure; and also, by posting up the same in the most public manner, for the space of fourteen days, at or near the place of trial.⁴⁰

In analogy with this statute provision, it is the practice in the Southern District of New York to require the marshal to make the same publication and take the same action in all civil cases *in rem* between party and party, unless the court shall for sufficient cause order a shorter publication.⁴¹ In cases *in personam* in the same district, process is returnable on the general return day next after the issuing of the process.⁴² In the Eastern District of New York, process both *in rem* and *in personam* is returnable on the first general return day next succeeding the issuing thereof, six days intervening between the issuing and the return of process.⁴³ The form of an attachment *in*

³⁷ Lane v. Townsend, Ware, 289; The Alexander, 1 Dods. 282; The Dundee, 1 Hag. Ad. R. 124; Act of May 8, 1792; § 4; Conk. Treat. 2d ed. 120; Ad. Rule 9; Act of March 2, 1799 § 69; Ex parte Jesse Hoyt, 38 U. S. (13 Pet.) 279; Sea Laws, 445; Boyd Proc. 17; Jennings v. Carson, 8 U. S. (4 Cranch), 2; *vide* Taylor v. Carryl, 61 U. S. (20 How.) 583; The Gazelle, Sprague, 378; The Julia Ann, id. 382.

³⁸ The Globe, 2 Blatchf. C. C. R. 427; *vide* The Adele, 1 Ben. 309.

³⁹ The Haytian Republic, 60 F. R. 292.

⁴⁰ Rev. Stat. § 923.

⁴¹ Ad. Rule 9; Dist. Rule, 32.

⁴² D. C. Rule 35.

⁴³ D. C. Rule 35a.

rem and monition to all persons interested will be found in the Appendix, p. 604.

It is not uncommon, however, that the libellant, anticipating an appearance for the libelled ship, has not required the marshal to publish the notice referred to above, in which case it is usual for the marshal's return to state that he has "not given due notice, etc." On such return of process, where no one appears to claim, and a sale is necessary, it is still imperative to publish the notice of seizure to cut off parties who have not been served, since District Court Rule 33 provides that no order for sale of non-perishable property shall be had without publication of the process. It is usual therefore for the proctor, when the return is made in that form, to ask for what is called a "short order" of publication, i. e. an order to publish for six days only, and to lay the process over for a sufficient time for such publication of the notice, at the end of which time and which publication the decree of condemnation and sale may be entered.

§ 361. Notice in Suits in Rem. II.

The proceeding *in rem* is predicated on the assumption that the owner and other persons interested in property have it in their own charge, or have placed it under the control of others who will see that the owner's interests will be protected, whenever any process shall be served upon it. The process commands the marshal to notify all parties; it is his duty, therefore, to make the service openly, to leave a written notice with the person in possession, and to exercise his acts of custody and control, by a keeper or otherwise, in such open and visible manner, that the persons having the same in charge may take the necessary steps to protect the rights of all those interested.⁴⁴

§ 362. Court's Right of Possession under Process in Rem.

Process *in rem* is founded on a right in the thing, and the object of the process is to hold the thing itself, or a satisfaction out of it, for some claim resting on a real or a quasi proprietary right in it. The court arrests the thing for the purposes of satisfaction. It holds its possession by its officers, and the property in contemplation of law is in the custody of the court itself. As the court has the legal possession for the purposes of justice, and to that extent is clothed with the sovereignty of the country, it has, of course, the power to defend and protect its possession, and to resume it, if it should be by any means divested. If, therefore, the thing be taken out of the possession

⁴⁴ See *In re Fassett*, 142 U. S. 479.

of the officer by a party to the suit or by a stranger, the court, on motion, will compel such person, by attachment, or other summary process, to re-deliver it. And if a purchaser obtain possession without paying the price, he may, in like manner, be compelled to pay the purchase money, or re-deliver the property to the officer.⁴⁵ If, while a vessel is in the custody of the marshal, she proceeds about her business, through arrangement with the parties, and earns money, such money does not belong to her owner, but should be returned to the court by the marshal with the vessel or her proceeds, for the benefit of the suit.⁴⁶ As to re-seizure of property, see *post*, § 421.

§ 363. Property in Possession of Third Persons I.—How Reached.

In all suits *in rem* against a ship, her tackle, apparel, furniture, boats, and other appurtenances, if such tackle, apparel, furniture, boats, or other appurtenances, are in the possession or custody of any third person, the court may, after a due monition or notice to such third person, and on hearing cause, if any, why the same should not be delivered, award and decree that the same be delivered into the custody of the marshal, or other proper officer, if, upon the hearing, the same is required by law and justice.⁴⁷ Or, if they have been sold, the court may require the party holding the proceeds to pay the same into court.⁴⁸ Rule 8 of the Supreme Court mentions only the case of a ship, but the principle is one of general application, and under like circumstances, when a principal object is arrested, and some of its appurtenances are withheld from the marshal by a third person, the court would, in the manner pointed out in the rule, compel its delivery to the marshal. A petition to the court setting forth the facts of the possession by such third person, and an order directed to him to show cause why he should not deliver over the possession to the marshal, would be, under the analogy of Admiralty Rule 38, the proper procedure in most of the cases covered by the rule. But if, at the time of filing of the libel, it were known that the property were held under claim of ownership by the person in whose possession it was, the proper practice would be to file a libel with allegations corresponding to a libel with clause of foreign attachment, and have the issue of ownership of the property referred and decided as a preliminary

⁴⁵ The *U. S. v. La Jeune Eugenie*, 2 Mason, 409; The *Phebe*, Ware, 363.

⁴⁶ The *C. W. Cowles*, 124 F. R. 458.

⁴⁷ Ad. Rule 8.

⁴⁸ The *Geo. Prescott*, 1 Ben. 1.

matter. The proceeding can, in any event, work no injustice, for if there is no preliminary hearing as to ownership, such third person can immediately intervene in the suit for his interest in the things so taken from him.⁴⁹

§ 364. Property in Possession of Third Persons II.

In cases of proceedings *in rem*, where freight or other proceeds of property are attached, or are bound by the suit (as is often the case in suits for seamen's wages, bottomry, or salvage), and such freight, or other proceeds are in the possession of any third person, the court, upon application, by petition, of the party interested, may require the party charged with the possession thereof, to appear and show cause why the same should not be brought into court to answer the exigency of the suit, and if no sufficient cause be shown, the court may order the same to be brought into court and upon failure of the party to comply with the order, may award an attachment, or other compulsory process, to compel obedience thereto.⁵⁰

§ 365. Property in Custody of Collector.

Where property is libelled while it is in the custody of a collector of customs, as in a suit *in rem* against cargo to enforce the lien for freight, it is sufficient service of the process to leave a copy thereof with the collector, with notice of the attachment and a requirement that the collector shall detain the property in custody until the further order of the court, with notice also, except in customs seizure cases, to the owner of the property or his agent, if found within the district.⁵¹ When such service is made the court acquires jurisdiction sufficient to make a decree in the cause and sell the property under a *venditioni exponas*, subject, however, to the payment of duties and expenses due the United States.⁵²

§ 366. Marshal's Duty as to Property Seized.

It is the duty of the marshal to keep the property seized, in such

⁴⁹ The Dundee, 1 Hag. Ad. R. 124; The Alexander, 1 Dod. 282; Ad. Rule 8.

⁵⁰ Ad. Rule 38; Lane v. Townsend, Ware, 289; Greenhill v. Greenhill, 1 Curtis, 466; The Queen of the Pacific, 18 F. R. 700; American Steel Barge Co. v. C. & O. Coal Agency Co., 115 F. R. 669; Bank, etc., v. Freights of the Ansgar, 127 F. R. 859, aff'd 137 F. R. 534. In The Conveyor, 147 F. R. 586, the proceeds of an insurance policy on a vessel were ordered into court under Rule 38 to answer for a deficiency in the proceeds obtained by sale.

⁵¹ D. C. Rule 14.

⁵² Two Hundred and Fifty Tons of Salt, 5 F. R. 216; Casks of Cement, 40 F. R. 606.

safe and secure manner as to protect it from injury while in his custody; so that if it be condemned, or be restored to the owner, its value to the parties may be unimpaired, and the marshal himself be not responsible for unnecessary deterioration or damage.⁵³

§ 367. Separate Processes may be issued.

If the suit be both *in rem* and *in personam*, there may be separate processes at different periods, or one process may combine the usual process *in personam* with the process *in rem*, in which case the marshal executes it in the same manner as he would do the two if they were separate, and he makes on the united process a return of all that he has done in pursuance of the writ.

§ 368. Property Exempt from Seizure.

Property of the United States may not be attached.⁵⁴ Public policy demands also that the property of a municipal corporation shall not be seized by the marshal,⁵⁵ though this does not bar a suit *in personam* against the corporation for the same cause of action.⁵⁶ Property in the hands of a collector of customs may not be seized, except as stated in § 365. Comity between the courts of the United States and the state courts requires that the former shall not attach property in the hands of a sheriff,⁵⁷ or of an assignee,⁵⁸ or of a receiver appointed by the state court,⁵⁹ unless the vessel sought to be libelled is outside of

⁵³ See *The Robert R. Kirkland*, 153 F. R. 863.

⁵⁴ Unless it can be done without disturbing the possession of the United States; See *The Davis*, 10 Wall. 15. This immunity from seizure is by comity extended to property belonging to and in the possession of a foreign government; *Long v. The Tampico, etc.*, 16 F. R. 491.

⁵⁵ *The Fidelity*, 16 Blatch. 569; *The Protector*, 20 F. R. 207; *The F. C. Latrobe*, 28 F. R. 377; *The John McCracken*, 145 F. R. 705.

⁵⁶ *Workman v. Mayor*, 179 U. S. 552; *Thompson Nav. Co. v. Chicago*, 79 F. R. 984; *United States Shipping Co. v. United States*, 146 F. R. 914.

⁵⁷ *Taylor v. Carryl*, 20 How. 583.

⁵⁸ *The J. G. Chapman*, 62 F. R. 939; *The City of Frankford*, 62 F. R. 1006. But see *the James Roy*, 59 F. R. 784. In *Charles Barnes Co. v. One Dredge Boat*, 169 F. R. 895, the libel by error had been filed against the wrong vessel, and before the error was corrected and an amended libel filed, a state court proceeding had been begun and an assignee had taken possession of the property. The court held that the amended libel related back to the original libel, by the filing of which, prior to the state court proceeding, the United States court had acquired jurisdiction.

⁵⁹ *The Red Wing*, 14 F. R. 869; *The E. L. Cain*, 45 F. R. 367; see *The Lotta*, 65 F. R. 319. For a general discussion of the right of seizure by the United States and State courts, see *Moran v. Sturges*, 154 U. S. 256.

the jurisdiction of the state which appointed the receiver.⁶⁰ But suit may be had against receivers appointed by the United States court or *in rem* against a vessel in their hands.⁶¹ It is always advisable, however, to obtain permission before so suing or attaching property. Section 4251 of the Revised Statutes provides that no canal boat shall be libelled for wages.

§ 369. Damages for Arrest of Vessel.

In general, a party is not entitled to recover damages which may have resulted from the seizure of his vessel under lawful process issued out of an admiralty court, even though the result of the suit may be the dismissal of the claim.⁶² The stipulation for costs is supposed to cover such demands. But if it can be shown that the libel was filed maliciously or in bad faith, damages for the attachment may be decreed against the libellant.⁶³ And a vessel is liable *in rem* when used by a third party as the instrument for his malicious arrest and detention of another vessel.⁶⁴

⁶⁰ *The Willamette Valley*, 62 F. R. 293, *aff'd* 66 F. R. 565; see *The Willamette Valley*, 63 F. R. 130 and *Crapo v. Kelly*, 16 Wall. 610.

⁶¹ *Paxson v. Cunningham*, 63 F. R. 132.

⁶² *The Alex. Gibson*, 44 F. R. 371; *The Alcalde*, 132 F. R. 576; *The Amiral Cecille*, 134 F. R. 673.

⁶³ *The Adolph*, 5 F. R. 114; *Kemp v. Brown*, 43 F. R. 391; *The Alex. Gibson*, 44 F. R. 371; *Henderson v. Iron Ore*, 38 F. R. 36; *Mellquist v. The Wasco*, 53 F. R. 546; *Gow v. William W. Brauer S. S. Co.*, 113 F. R. 672.

⁶⁴ *The Petersburg*, 68 F. R. 387.

CHAPTER XXIII.

INTERLOCUTORY RELEASE OR SALE OF PROPERTY.

§ 370. Release of Property from Attachment.

If a ship or other property be arrested in an admiralty suit, the same may at any time after it is attached, and before the return of process, upon the application of the claimant, be delivered to him, upon a due appraisement under the direction of the court, and upon the deposit by claimant in court, of so much money as the court shall order, or upon his giving a stipulation, with sureties in such sum as the court shall direct, to abide by and pay the money awarded by the final decree rendered by the court, or by the appellate court, if an appeal intervene.¹ Any person having a right to intervene in respect to property attached may, upon evidence showing any improper practices or a manifest want of equity on the part of the libellant, have a mandate from the judge that the libellant show cause *instantly* why the attachment should not be vacated.² The stipulation or money thereafter becomes for the purposes of that suit a substitute for the thing itself, and the vessel may not ordinarily be re-arrested on this same clause. See post, § 421. When a vessel is delivered on bail, the owner takes her *cum onere*. She remains in his hands, liable to all the liens legally attaching to her, except the one on which he has been attached and released on bail.

§ 371. Perishable Property—Interlocutory Sale or Appraisement.

If the property be in its nature perishable, or is liable to deterioration, decay or injury by being detained in custody pending the suit, the court may, on the application of either party, in its discretion and before return of process, order the same, or so much thereof as shall be perishable or liable to deterioration, decay, or injury, to be sold, and the proceeds thereof, or so much thereof as shall be a full security to satisfy the decree, to be brought into court, to abide the event of the suit. A vessel herself as well as more perishable property

¹ Ad. Rule 10, 11; Dist. Rule 17.

² Dist. Rule 19.

may be sold during the progress of the suit if it is shown that she is deteriorating in the custody of the marshal.³ Instead of a sale the court may, on the application of the claimant, order an appraisement of the property to be made, and order the property to be delivered to the claimant on his depositing in court so much money as the court shall direct, or the court may order the property to be delivered to him on his giving a stipulation, with sureties, in such sum as the court shall direct, to pay the money awarded and abide by the final decree rendered by the court, or the appellate court, if any appeal be taken.⁴ These orders for sale, or delivery on bail, may be made at any time, as well in vacation as in term.⁵ In such cases, the money deposited, the stipulation, or the proceeds of the sale, are the objects to which the court resorts for satisfaction of the decree.⁶

§ 372. Interlocutory Sale of Non-perishable Property.

This can be had only when claimant defaults or refuses to make a deposit or to give a stipulation:⁷ hence, there can be no sale of such property until after the return of process, for during the time between the service and return of the process the claimant has opportunity to decide whether he will default or defend. District Rule 33 provides that no final decree ordering the condemnation and sale of property not perishable shall be entered without publication of notice of the process: nor will any interlocutory order of sale of the *res* be made by the court until the sum chargeable thereon shall have been fixed by the court, except in cases of default or consent of the parties appearing.⁸ When there is a default or consent of the parties appearing, the court issues its *venditioni exponas*, which is the regular order for sale of the admiralty court, and which is spoken of more particularly hereafter in treating of executions, *post*, § 499.

§ 373. Appraisement of Property Generally.

Where an appraisal is had, the Admiralty Rules provide that it shall be a "due" appraisal.⁹ An appraisal made in strict conformity

³The *Mendota*, 14 F. R. 358; The *Willamette Valley*, 63 F. R. 130.

⁴Ad. Rule 10.

⁵Ad. Rule 10; Dist. Rules 26-30; Rev. Stat. § 938; The *Alligator*, 1 Gal. 148; The *Struggle*, Id. 478; *post*, § 470.

⁶*Jennings v. Carson*, 8 U. S. (4 Cranch), 2; The *Nathaniel Hooper*, 3 Sumn. 542, 562; The *Cheshire*, Blatch. Pr. Cas. 165.

⁷Ad. Rule, 11; see The *Willamette Valley*, 63 F. R. 130; The *Nevada*, 85 F. R. 681.

⁸Dist. Rule 33; The *Nevada*, 85 F. R. 681; The *Sue*, 137 F. R. 133.

⁹Ad. Rules 10, 11.

with the statute or the rules here cited would be a due appraisal. Section 938 of the Revised Statutes and Rule 26 of the District Court treat of appraisals in suits by the Government for violations of the revenue or navigation laws, and provide that the appraisers shall be three in number, that they shall be sworn, that the appraisal shall be at the expense of the party on whose prayer it is granted, that one day's notice of application for the appointment of appraisers shall be given, or that the application may be made *instantly*, after seizure, if the parties or the proctors and the district attorney are present in court.

District Court Rules 27 and 28 treat of appraisals in suits of individuals, and provide that an order for appraisal may be entered of course, by the clerk, at the instance of any interested party, or may be entered by consent; and that only one appraiser shall be appointed, who may be named by the clerk if the parties do not agree in writing upon an appraiser, and the parties, for adequate cause, may appeal *instantly* to the judge from the clerk's nomination: the court may also, if desired, appoint more than one appraiser. District Rule 29 applies to both Government suits and suits of individuals, and provides that appraisers must be sworn to the faithful execution of their trust before executing it, and must give one day's notice of the time and place of making the appraisement, by notifying the proctors to the cause and affixing the notice in a conspicuous place adjacent to the United States Court rooms, where the marshal usually affixes his notices. The appraisement, when made, must be returned to the clerk's office.

§ 374. Relief at any Time—Necessity for Claim.

These applications for interlocutory or provisional relief, may be made at any time after the commencement of the suit, and before the decree, and as often, and whenever the circumstances may require such relief, at chambers as well as in open court, in vacation as well as in term.

The object of them is to enable parties to save themselves from those direct consequences of litigation *in rem*, which are often destructive of the thing itself, and deeply injurious to the party, without any benefit whatever to the cause of justice, or to the proceedings in court; and, therefore, if the claimant decline to make any such reasonable application to meliorate the evils of delay, and allows the ship to lie in the custody of the marshal, the court may, in its discretion, on the application of either party, upon due cause shown, order a sale of the ship, and direct the proceeds to be brought into court, or otherwise

disposed of, as it may deem most for the benefit of all concerned.¹⁰ This order would be made only after return of process, as shown in § 372.

The length of notice, mode of service, and other such details, can be regulated only by the judge of each district, according to the circumstances of the district.

It should, however, be observed, that no person is allowed to make an application to the court, in relation to the *res*, unless he first by a claim and stipulation, or other regular proceeding, acquire an acknowledged legal relation to the cause. In the matter of the sale or delivery of property, mutual convenience and the desire to save expense induce the parties usually to consent to the proper order. If consent will not be given, application must be made to the court.

¹⁰ *Ante*, §§ 371, 372. As to proceeds in court, see *post*, §§ 505, 506.

CHAPTER XXIV.

RETURN OF PROCESS—DEFAULT—APPEARANCE.

§ 375. Return of Process—Alias Process.

At the opening of the court on the return day of the process, the marshal returns the process to the clerk.

If the process has not been served the marshal so returns. The libellant's proctor may thereupon, if he desires, ask for an *alias* process, which is a re-issuing of the original process, and which, being ordered, is issued by the clerk and delivered to the marshal for service as was the original process. If the process has been served, the return of the marshal is read in open court by the clerk.

§ 376. Return of Process in Suits in Personam—Default.

The old practice of calling the defendant on three several days, and entering three several defaults if he did not appear, and practically not requiring him to appear till on the third day, has become, in modern times, an empty form, producing nothing but expense and delay, and, in the American courts, has fallen into entire disuse. The crier now, by order of the judge, if the suit be *in personam*, calls the defendant; and if he does not appear in person or by proctor, the court, on motion of the libellant's proctor, pronounces him in contumacy and default, and adjudges the libel to be taken *pro confesso* against him, and proceeds to hear the cause *ex parte*, and to decree therein as to law and justice may appertain. This *ex parte* hearing may take place at the time of the default, or on any future day as the court may direct. The usual course, when the libel is taken *pro confesso*, is to refer the matter to a commissioner, to hear the parties and make report thereon to the court.¹

§ 377. Opening Default—Rule 40.

After a defendant is pronounced in contumacy and default and the libel has been adjudged to be taken *pro confesso* against him, the

¹ Ad Rule 29; Collection Act of 1799, § 29; Conk. Treat. 2d ed. 362; Ad. Rule 44; Cape Fear Towing & T. Co. v. Pearsall, 90 F. R. 435.

court may, in its discretion, under the provisions of Admiralty Rule 29, set aside the default, and admit the defendant to make answer at any time before the final decree, upon the payment by defendant of all costs of the suit up to the time of granting leave therefor.³ It will be noticed that this discretionary power is, by Rule 29, lodged with the court up to the time of the entry of final decree only. That power is extended by Admiralty Rule 40 for ten days after the entry of the final decree on default, during which time the court may still, in its discretion, upon motion of defendant and payment of costs, rescind the decree. But after that period of ten days has elapsed, it has been held that the court has no power to open or rescind the decree in default cases, under the provisions of Rule 40,⁴ thus creating a difference in the power of the court as to final decree entered on default, and final decree entered on the merits, in which latter case the court has power to alter or rescind its final decree at any time during the term at which the decree was entered.⁴

Applications to open defaults should be made on affidavit, showing merits, reasons for the default and grounds for opening it, and should be brought formally before the court on order to show cause or motion, of which notice has been given to the other side.

§ 378. Return of Process in Suits in Rem.

When the process on a suit *in rem* is returned, proclamation is made by the crier, on motion of libellant's proctor, for all persons having anything to say why the property should not be condemned and sold to answer the prayer of the libel to come forward and make their allegations in that behalf.

On such proclamation any party having an interest in the *res* may appear. If no one appears, the defaults of all persons are entered. But in suits *in rem*, where no proctor has appeared for any claimant, before the libellant can obtain a decree or an order for the sale of the property he must furnish proof that actual notice of the action has been given to an owner or agent of the vessel proceeded against, or to the master in command thereof, in addition to the proof of publication of the notice of arrest of the vessel, or it must be made to appear to the court that such actual notice is un-

³ Ad. Rule 29.

⁴ *The Illinois*, Brown. Ad. 13; *Snow v. Edwards*, 2 Low. 273; *Northrup v. Gregory*, 2 Abb. C. C. 503; *Petition of Starin*, E. D. of N. Y., June 6, 1905, unreported.

⁴ See *ante*, § 340.

necessary.⁵ If such proof be furnished a decree of condemnation and sale may be made on a brief statement by the proctor of the cause of action, and the suit proceeds *ex parte* to a final hearing and decree, then, or at a future day; or the court may refer the matter to a commissioner to ascertain the amount and report it to the court.⁶ District Rule 34 speaks of actual notice only where the *res* is a vessel. But it is to be presumed that a similar notice to the owner or agent would be required if the *res* were anything other than a vessel.

For form of order, see Appendix, p. 652.

§ 379. Default of One of Several Defendants.

If there be several defendants, or several things proceeded against in the same suit, and there be a decree by default against some, and an appearance by others, the default of one, though it be absolute, and lead to final judgment and execution against such party or parties, does not prejudice those who have appeared, and they are at liberty to controvert facts, which, as to all others may be *res judicata* by force of the default and final decree.⁷

§ 380. Reference on Default to Compute Damages.

The court will not enter a decree on a mere default by defendant, but requires proof of the libellant's right to recover and the exact amount recoverable; and for that purpose will hear the cause *ex parte* after a default.⁸ It is the more common practice for the court to send the matter to a commissioner to take such proof, and the proceeding before the commissioner is a reference, similar to one ordered after a hearing on the merits (concerning which see post, §§ 467-469), except that, being *ex parte*, it is more informal. It is not usual for the court to refer to a commissioner matters of personal injury or uncertain damages, or mere questions of law, where the judgment and discretion of the court itself would be better informed by the actual hearing of the controversy, but there is no legal objection to ordering a reference in such cases, and it is sometimes done.

Commissioners, in matters referred to them, have all the usual powers of Masters in Chancery in cases of reference, and may administer oaths, and examine parties and witnesses in proper cases.⁹

⁵ Dist. Rule 34.

⁶ Ad. Rule 44; Dist. Rule 34.

⁷ *The Mary*, 13 U. S. (9 Cranch), 126.

⁸ Ad. Rule 29; Dist. Rule 33.

⁹ Ad. Rule 44.

The acts of Congress having provided for the appointment of United States commissioners to perform various semi-judicial duties, it is usual to order the references to them, as persons experienced in such matters, but there is no legal objection to referring a matter to any person as the commissioner chosen by the parties or appointed by the court for the particular case alone.¹⁰

§ 381. Default in Seizure Cases.

In cases of seizure, when no one appears, the decree of condemnation is absolute, the only question being whether the property be forfeited or not. In such cases, it is usual for the district attorney, on his motion for condemnation, to state briefly the substance of the libel and the cause of forfeiture.¹¹

§ 382. The Libellant may Default.

On the return day of the process, or at any other time, when, by the course and order of the court, it is the duty of the libellant to take any step in the cause, and he neglects to do so, and the defendant appears, the court may, on motion of the latter, order the libellant to be called, and if he do not appear, may, on like motion, decree him to be in default and contumacy, and pronounce the suit to be deserted, and the same may be dismissed with costs.¹² The admiralty rules of the Supreme Court do not, as in case of the default of the defendant, say anything of the power of the court to set aside the default of the libellant. There cannot be any question, however, of the power of the court, on application in proper time, to set aside any default for not complying with the rules or orders of the court. There might be doubts of the power to set aside a regular final decree on the merits, although taken by default, and hence the propriety of the twenty-ninth and fortieth rules, giving the court power, in its discretion, to open defaults and grant rehearing.

§ 383. Appearance and Answer of Defendant.

If, by reason of the attachment of his vessel or goods, the claimant

¹⁰ Ad. Rule 44.

¹¹ *Miller v. The U. S.*, 11 Wall. 268.

¹² Ad. Rule 39. Dismissal for Lack of Prosecution. The court will very rarely dismiss a cause for the failure of the libellant to bring it on for trial after issue joined. In the Southern District of New York it is necessary for the defendant to put the cause on the calendar and bring it up for hearing, before the court will take the libellant's default and dismiss the case. See *The Mariel*, 6 F. R. 831. The rules alluded to in that case are no longer extant, but the practice indicated is still as there set forth.

or defendant has filed an appearance before the return day of the process, it will be necessary for him to appear on the return day only for the purpose of filing the answer or obtaining further time within which to file it. If he has not appeared before the return day, it is his duty to be present in court, by his proctor, and note his appearance on the call of the process by the clerk, and then file his stipulation for costs and answer within the time allowed by the court. The court is liberal in granting such time in all cases when to do so will not work a hardship upon the libellant. Further time to answer the libel is practically an extension of the return day of the process; and on the further day, the defendant may take any course which he might have done on the actual return day of the process, had he been then ready.

It is not usual, in the Southern District of New York, for the proctor to give any written notice of his appearance on return of process. In the presence of the court, the defendant's proctor states *viva voce* that he appears for the defendant, and files his answer or asks for time to do so. The more orderly practice, however, would be to require the proctor for the defendant to furnish to the clerk, to be filed, a written notice that he appears for the defendant, in order that the files and minutes of the court may always show who is the responsible representative of the defendant; and, in fact, the clerk requires such written notice when, for purposes in releasing the property attached, or other reason, an appearance is entered or claim or stipulation filed before the return day of the process.

If a defendant desires to take advantage of some irregularity or to raise the question of jurisdiction, it is well to make a special appearance for such purpose only.

The notice is the usual notice of appearance, and is addressed to the clerk, and a copy should be served on the proctor for libellant, though such service is not obligatory.

§ 384. Perfecting Appearance.

It is a general rule that appearance waives any objection, so far as respects the mere formality of the previous proceedings. But this refers to the more full and deliberate intervening, which is effected only by signing the claim, when necessary, and the stipulations.¹⁸ If, therefore, there be any question of formality to be brought before the court, it should be done before perfecting the appearance and by

¹⁸ But see *Atkins v. Fibre Dis. Co.*, 85 U. S. (18 Wall.) 272, 277, 298.

special appearance. By the ancient practice, proctors were required to exhibit a proxy or instrument of appointment by the clients, but this strictness is now entirely obsolete. By the modern practice, for a period of at least two hundred and fifty years past, proxies have been dispensed with, and a proctor is at liberty to commence or defend a suit on his own responsibility, without the production of any proxy. He is bound, however, to produce his parties before the court, when called on to do so; and is expected to be duly authorized to appear by the party for whom he intervenes. The court has a right to call upon the proctor, at any period of the cause, to state not generally, but specifically by name, the whole of the parties for whom he is authorized to appear.¹⁴

§ 385. Voluntary Appearance—Filing Claim or Stipulations without Seizure.

It is common practice for the claimant of a vessel to appear and file claim and stipulations without a seizure, on notice of the filing of the libel. This operates as a general appearance, and the court has full power over the cause, and stipulations so given are valid.¹⁵ But if process is illegally issued against a vessel, the appearance and the filing of a stipulation by claimant are not a waiver of such illegality, even though the stipulation recites that the claimant and his surety submit themselves to the jurisdiction of the court.¹⁶ But when a libel against vessel and owner contains no prayer for monition *in personam*, and no process was in fact served on the owner, his voluntary appearance to defend the suit *in rem* does not give the court jurisdiction to enter a personal judgment against him.¹⁷ Nor does a decree, made on a voluntary appearance by the ship, bind the cargo.¹⁸

§ 386. Appearance and Proceedings by Garnishee—(See ante, §§ 352, 356, 357.)

The garnishee, or party holding property attached, being served with the citation or monition, must appear in person, or by proctor, on the return day of the monition, and answer in writing, on oath, as to the property, goods, chattels, credits, and effects, of the defendant

¹⁴ Prankard v. Deacle, 1 Hag. Ecc. R. 185; Clerke Praxis, 13, 15; The Wilhelmine, 1 W. Rob. 337, 340; S. C. 2 Notes of Cases, 20; The New Draper, 4 C. Rob. 290.

¹⁵ The Roslyn and Midland, 9 Ben. 119; The Frank Vanderkerchen, 87 F. R. 763. A stranger to the suit, by a voluntary appearance, may become liable for damages. See Briggs v. Taylor, 84 F. R. 681.

¹⁶ The Berkley, 58 F. R. 920.

¹⁷ The Ethel, 66 F. R. 340; The Lowlands, 147 F. R. 986.

¹⁸ Bailey v. Sunberg, 49 F. R. 583; The Harrogate, 112 F. R. 1019.

in his hands, and to such interrogatories touching the same, as may be propounded by the libellant. These interrogatories may be annexed to the libel, or put in separately, after the garnishee has appeared, and the answer of the garnishee must be filed in the cause.¹⁹

The garnishee may deliver up to the marshal the property which he admits to be property of the defendant. If he does not so deliver it and fails to appear on the return of the process, an order for the payment of the fund into court may be entered by default. If he appears and files an affidavit admitting property of the defendant in his hands, either an order may be entered that he pay it into court within a certain time or give stipulation that he will hold it, with interest, to abide the exigency of the suit, and will abide by the order or decree of the court in relation thereto, and his obedience to the order may be enforced by attachment.²⁰

If he appears and files an affidavit denying that there is property of the defendant in his hands, the court will either hear the issue so made, or will, on motion of the libellant, order a reference to a commissioner to ascertain and report what is the fact. If such report determines that there was property of the defendant in the hands of the garnishee, the court will order him to pay it into court or give stipulation as above.

If property of the defendant is thus found to have been attached the court has power to proceed in the original cause and decree against the defendant by default unless he appears.

If the defendant appears in the cause and gives security to discharge the attachment as provided by the rules,²¹ no further proceeding is necessary against the garnishee. If he appears in the cause but fails to give security, the proceeding against the garnishee may continue as above. And the cause against the defendant proceeds on his appearance as an ordinary action *in personam*.²²

As to whether the answers of the garnishee to interrogatories are evidence in his favor, or whether their effect is that of a pleading, see *post*, § 441.

If the property of a third person be attached, he may intervene by claim, for the protection of his interest.

¹⁹ Ad. Rule 37.

²⁰ Dist. Rule 12.

²¹ Dist. Rule 17-22.

²² Dist. Rule 13; Ad. Rule 34; *Lane v. Townsend*, Ware, 289; *Clerke* Prax. tit. 38; Hall Ad. 78.

§ 387. Stipulation must be given by Defendant in Suit in Rem.

No appearance or answer will be received by the clerk, unless the person approving or answering gives a stipulation for costs,²³ with sureties, and upon filing a claim, the claimant must file a stipulation with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court or, upon appeal, by the appellate court.²⁴ In practice, it is usual to defer putting in the stipulation till the time of filing the answer; but in strictness no party is allowed to make delay or expense to the libellant, till he shall have given the necessary security. The appearance of the party is not perfected, he is not considered fully in court, till he has put in his claim and stipulations.

²³ Dist. Rule 7.

²⁴ Ad. Rule 26.

CHAPTER XXV.

THE PLEADINGS AFTER THE LIBEL.

§ 388. The Claim.

The pleadings on the part of the defendant are, the claim, the exception and the answer.

The claim is confined to proceedings *in rem*, in which alone can there be any occasion to make a claim of property. It is a statement in proper form, of the rights of the party making it to the property attached by the process of the court. It has been before remarked, that all parties having an interest in the property attached in a suit *in rem* will be bound by the decree, and, of course, are entitled to come in and make themselves parties to the suit, to defend their interest. Persons having liens upon the property may thus intervene, a maritime lien being a sort of proprietary interest. All parties who thus intervene as defendants are bound, in the first place, to make their claim to the property, in other words, to state their interest in it, that the court and the libellant may know whether, and to what extent, they have a right to defend the suit; for it is quite as important to the cause of justice that the libellant's rights should not be impaired by the unauthorized meddling of those who have no interest, as that the defendant's rights should not be impaired by his not being allowed to defend it in his own name. The claim is nothing but the statement of the party's right in the property, and its sole purpose is to show his right to appear and defend the suit and represent the property.¹ After a party has appeared and claimed as owner he is estopped from denying that he is the owner of the property, and he cannot withdraw without substituting another claimant in his place,² and if claimant signs the stipulations, he is personally liable for any damages

¹ Ad. Rule 26; Dist. Rules 39, 40. *The Mary Anne*, Ware, 104, 107; *Clerke Prax.* tit. 3; *Hall's Ad.* 78; *The Two Marys*, 12 F. R. 152; *The U. S. v. Jeune Eugenie*, 2 Mason, 409; *The Bark Tulchen*, 2 F. R. 600.

² *The Eliza Lines*, 61 F. R. 308; and such substitution is ineffectual if the new claimant fails to submit himself to the jurisdiction of the court; *Id.* See *Briggs v. Taylor*, 84 F. R. 681; *Gomila v. Culliford*, 20 F. R. 734.

which may be proven above the stipulated value,³ unless the stipulation has been given for the full value of the ship.

No set form of words is necessary to form a claim. In this, as in other pleadings, the court looks to the substance rather than the form. It must state that the party is the true and *bona fide* owner of the interest which he represents, and that no other person is the owner thereof. It must be verified by the oath of the party, or his agent or consignee. When it is verified by the oath of an agent or consignee, the latter must also swear that he is authorized to do so by the owner, or, if the property be at the time of arrest in the possession of the master of a ship, the master must aver that he is the lawful bailee thereof for the owner.⁴ As the putting in a claim and defending a suit may put the libellant to great expense, unnecessary and unjust if the claimant have no right, he must file a stipulation at the time of putting in his claim, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon appeal, by the appellate court.⁵ In the Southern District of New York the stipulation is in \$250. It may be increased by the court, if necessary, on motion.⁶ For forms of claim, see the Appendix, pp. 623-626.

This claim may be put in immediately, without waiting for the return of the process.

If the right of the claimant to intervene as such is contested by the libellant, he may file an exception to the claim. And the question arising on such exception may be summarily disposed of by a hearing before the court or by a reference.⁷

§ 389. Who may Claim.

Claimants of separate interests may appear separately, and put in separate claims. The owners of the respective shares of the ship, the owners of respective portions of the cargo, the government, for its duties or for a forfeiture, the underwriters, when they have reason to believe that the property has been or may be abandoned to them, a mortgagee in possession, when the suit affects his lien upon the vessel, the consul of a foreign nation, if he have reason to believe that the

³ The Zodiac, 5 F. R. 220; The Southwark, 129 F. R. 171.

⁴ Ad. Rule 26.

⁵ Id.

⁶ Ad. Rule 26; Dist. Rule 7; Jenks v. Lewis, Ware, 51.

⁷ D. C. Rule 39; The Two Marys, 10 F. R. 919; see The Seminole, 42 F. R. 924; The John K. Gilkinson, 150 F. R. 454.

citizens or subjects of his nation are interested, in short, any person or officer will be allowed to appear and make his claim (first giving security for costs and expenses), whenever, in the opinion of the court, excluding him may lead to a failure of justice. Persons or officers, however, who appear by virtue of some general right, will not be allowed to receive the property or money awarded by the decree, unless the right of the principal party to receive it, and the right of the agent to represent him be proved to the court.*

§ 390. Claims where there are Several Libels.

If there be several libels against the same vessel or property, the claimant must put in his claim in each suit, and strictly, the libellants in each suit should also put in their claim in all the other suits, lest a decree of condemnation and sale by default, in one suit, should dispose of the property, without the power of redress. In proper cases, causes may be consolidated.†

§ 391. Claimant must Answer.

The merely putting in of a claim is not a defence to the libellant's demand. The property may belong to the claimant, and still the libellant have full title to the relief sought, indeed, his right to that relief often depends upon the claimant's being the owner of the property. After the claim is in, and the claimant is thus entitled to be heard for his interest, he must put before the court the grounds of his defence, in an answer containing suitable allegations, that the court, as well as the opposite party, may be informed of the grounds of defence. The former practice of uniting claim and answer in one pleading, does not now prevail. If the libel does not pray for an answer, the defendant need not put in an answer, properly so called; that is to say, he is not compelled to answer the facts set forth in the libel, as, e. g., in the case of the answer of a garnishee. But whatever may be the prayer of the libel, any party defending the suit must spread before the court the grounds of his defence, or he will be debarred from making his defence, it being a primary rule in admiralty,

* Dunlap Prac. 88; *The Bello Corrunes*, 19 U. S. (6 Wheat.) 152; *The Antelope*, 23 U. S. (10 Wheat.) 66; *The London Packet*, 1 Mason, 14; *The Mary Anne, Ware*, 104; *Hinchliffe's Prac.* 10; *The Vrouw Judith*, 1 Rob. 127-129; *The Kinders Kinder*, 2 id. 88; *The Fortune*, id. 92; *The Rising Sun*, id. 104; *Thomas v. The Kosciusko*, 11 N. Y. Leg. Obs. 38; *The Monticello v. Mollison*, 58 U. S. (17 How.) 152; *The Jenny Lind*, 3 Blatchf. 513; *Robson v. The Huntress*, 2 Wall. Jr. C. C. 59; *Matter of Stover*, 1 Curt. C. C. 201.

† *Vide post*, § 412.

that the cause must be heard and decided according to the allegations as well as the proofs in the cause.

§ 392. Set-Off.

The respondent in the admiralty cannot make a defence out of an independent claim, by way of set-off.¹⁰ But a claim arising out of the contract on which the libellant's cause of action rests may be used to defeat it.¹¹ Thus if a vessel be libelled to recover for damage to cargo, her owner may set up as a defence a balance of the freight on it unpaid. But he could not recover in that action any excess of freight over the damage.¹²

§ 393. Cross-Libel. I—Answer where Vessel Wholly Lost.

It is necessary, if a defendant wishes to obtain affirmative relief, for him to file a cross libel to the original libel filed against him or his vessel.¹³ This is in the form of an ordinary libel by the original defendant against the original libellant or his vessel,¹⁴ setting forth the facts of the case from his standpoint, and claiming his own damages without reference to the claim which has been made against him. The cross suit will be tried with the original suit, and, if the original defendant and cross libellant is successful, he can have an affirmative decree in the combined suit for his full damages.

It is provided by District Rule 46, that in a suit *in rem* for collision, if the vessel of the original libellant be lost so that no cross-suit against her could be maintained, and the defendant desires to recoup or offset any damage to his own vessel in case it should be determined on the trial that the collision occurred through the fault of both vessels, he must, in his answer, state the facts and his own damages, in like

¹⁰ 2 Pars. Shipping and Admiralty, 433; Willard v. Dorr, 3 Mason, 91; Anderson v. Pacific Coast Co., 99 F. R. 109; American Steel Barge Co. v. Chesapeake & C. Coal Agency Co., 116 F. R. 857; Davidson v. Green, 127 F. R. 999; Hastorf v. Dregon-McLean Co., 128 F. R. 982; George D. Emery Co. v. Tweedie T. Co., 143 F. R. 144; The Oceano, 148 F. R. 131; Roney v. Chase, 160 F. R. 268; Walton v. The Frank Gilmore, 73 F. R. 686.

¹¹ Davidson v. Green, 127 F. R. 999.

¹² 2 Pars. Mar. Law, 717; Willard v. Dorr, 3 Mason, 91; The James & Catherine, Bald. 544; The Water Witch, 66 U. S. (1 Black) 494; The Two Brothers, 4 F. R. 158; O'Brien v. Bags of Guano, 48 F. R. 726. See The City of New Bedford, 20 F. R. 57; The C. B. Sanford, 22 F. R. 863; The Zouave, 29 F. R. 296; The Frank Gilmore, 73 F. R. 686.

¹³ The Reuben Doud, 3 F. R. 520; The Nadia, 18 F. R. 729; The Giles Loring, 48 F. R. 463.

¹⁴ See The Ping-On v. Blethen, 11 F. R. 607.

manner as upon filing a cross libel¹⁴ and such statement of damage shall be wholly without prejudice to any defence he may make that the collision was wholly the fault of the other vessel.¹⁵

§ 394. Cross-Libel. II.

The 53d Admiralty Rule contains an important point of practice on cross suits, not confining the subject-matter to collision cases, as does the district court rule spoken of in the preceding section, but referring generally to cases where a cross libel is filed upon a counter-claim arising out of the same cause of action for which the original libel was filed.¹⁶ In such cases, the rule provides that the respondent on the cross libel, i. e., the original libellant, shall give security in the usual amount and form to respond in damages as claimed in the cross libel, unless the court, on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

The rule makes no distinction between cases *in rem* and *in personam*, and the security must be given whether the original or the cross suit be in either form.¹⁷ Nor does it make any difference that the original suit is brought by a master for the benefit of all concerned, and that he is individually unable to give the security required.¹⁸ Nor does it make any difference that the vessel of the original libellant has been totally lost in the collision on account of which the libellant sues, and that consequently he may be exempted from liability in the cross suit under the limitation of liability statute. For it cannot be known until the trial whether the owner is personally liable or not, and hence whether or not he is entitled to claim exemption by reason of the loss of his vessel; and so the security must be given as required by the rule, and the limitation of liability statute set up as a defence. If there are several claims against the

¹⁴ Dist. Rule 46.

¹⁶ *The Dove*, 91 U. S. 381; *Crowell v. The Theresa Wolf*, 4 F. R. 152; *George D. Emery Co. v. Tweedie Trading Co.*, 143 F. R. 144. The words "same cause of action" should be construed broadly, and as equivalent to "same transaction, dispute or subject-matter;" *Genthner v. Wiley*, 85 F. R. 797; *The Highland Light*, 88 F. R. 296.

¹⁷ *The Toledo*, Brown Ad. 445; *Franklin Sugar Refining Co. v. Funch*, 66 F. R. 342; *The Bristol*, 4 Ben. 55; *Vianello v. Credit Lyonnaise*, 15 F. R. 637; *Empresa, etc., v. Northern, etc., Co.*, 16 F. R. 502; *Compagnie Universelle v. Belloni*, 45 F. R. 587; *The Electron*, 48 F. R. 689; *Lochmore S. S. Co. v. Hagar*, 78 F. R. 642; *Morse I. & D. Co. v. Luckenbach*, 123 F. R. 332.

¹⁸ *Old Dominion S. S. Co. v. Kufahl*, 100 F. R. 331.

respondent in the cross libel, growing out of the facts on which arose the claim of the cross-libellant, the course of such respondent would be to give the security required under the 53d Rule, and then begin an independent proceeding in limitation of liability, and, in that proceeding, obtain an injunction against the cross-suit, as well as against other claims. If there is only the claim of the cross libellant, and the cross libel or the facts generally show plainly that there can be no personal liability on the part of the respondent in the cross-suit and that the limitation of liability statutes would protect him, the court, on being advised of the fact, has power, under the provisions of the 53d Rule, to dispense with the giving of security under the cross libel.

It is always necessary for respondent in the cross-suit to apply to the court for an order that the original libellant give security or be stayed, since the provision of the rule alone will not act as a stay.

Process under the cross libel may be served on the proctors for the original libellant, instead of on the party himself:¹⁹ the security on the cross libel must be promptly demanded or it may be refused, and an appeal from an order refusing the application for security or stay does not operate to suspend proceedings under the original libel.²⁰ By filing a cross libel and demanding security under the 53d Rule, the defendant in the original suit waives no defence.²¹

§ 395. Exceptions.

If any pleading or proceeding be irregular, insufficient, or objectionable, the proper mode of bringing before the court the objection is by exceptions or exceptive allegations, which in their purpose and effect correspond with special demurrers and pleas in bar at common law, and are properly classed with pleadings. Thus, if the libel, the answer, the interrogatories, or the answers to them, the report of the clerk or commissioner, to whom any matter is referred, be liable to just objection, it may be excepted to, and if not excepted to, the court will be slow to listen to any objections to its form or substance. Facts judicially known to the court, but which do not appear on the face of the pleading, may be brought up by exceptive allegations, attached to exceptions.²² And where, in a suit *in rem*, an answer is

¹⁹ *The Eliza Lines*, 61 F. R. 308.

²⁰ *Franklin Sugar Ref. Co. v. Funch*, 66 F. R. 342, 73 F. R. 844.

²¹ *The Electron*, 74 F. R. 689.

²² *The Seminole*, 42 F. R. 924; *The John K. Gilkinson*, 150 F. R. 454.

required of a person having no interest in the subject-matter, he may file an exceptive allegation and notice the same *instanter* for hearing.²³ The proper party to except to a libel is the claimant,²⁴ but any one who has appeared for his interest may except.

In mere matters of form, exceptions should be made before answering in chief, or at the same time, or they will be considered as waived.²⁵

§ 396. Exceptions and Answer.

If on the libel itself²⁶ it appears that the libellant ought not to have the relief for which he prays or that the court have not jurisdiction, instead of answering the facts alleged in the libel the respondent may except to the libel, stating in an exception the point in which he considers the libellant's case defective; or, if there be any single fact on which the defendant chooses to rely as a bar to the libellant's demand, as a prior judgment or decree, or release, an accord and satisfaction, a forfeiture, or the like, he may set it up alone, and put his case upon that issue. The admiralty rules provide specifically for exceptions to an answer by a libellant,²⁷ and do not mention exceptions by a defendant to a libel. The same right of exception, however, prevails to each party, and the practice in both cases is the same as set forth in the next paragraph. If the exception is overruled, the court will ordinarily allow the defendant to plead to the merits. The practice often prevails of uniting the matter of the exception and the answer in the same pleading.²⁸ If exceptions set up matter of objection to form, they are called dilatory exceptions; if matter in bar, they are called peremptory exceptions.

The form of a dilatory and a peremptory exception will be found in the Appendix, p. 630.

§ 397. Excepting to the Answer.

The libellant may except to the sufficiency, or fulness, or distinctness, or relevancy, of the answer to the articles and interrogatories in the libel.²⁹

Exceptions must be carefully prepared, specifying in the simplest

²³ Dist. Rule 40.

²⁴ *Florence, etc., Co. v. Alabama T. Co.*, 128 F. R. 915.

²⁵ *Furniss v. The Magoun*, Olc. 55; *Knight v. The Attila*, Crabbe, 326, Fed. Cas. 7881; *The August Belmont*, 153 F. R. 639.

²⁶ See *Prince S. S. Co. v. Lehman*, 39 F. R. 704.

²⁷ Ad. Rules 28, 30.

²⁸ *Inman v. The Lindrup*, 70 F. R. 718.

²⁹ Ad Rule 28.

and clearest manner, in separate articles, the matter excepted to, each exception being numbered; and the exception must be taken without unnecessary delay. The time is usually fixed by the rules of the court; in the Southern District of New York, exceptions may be put in at any time before filing the answer.³⁰ They must be filed with the clerk, and notice thereof given to the opposite party. The latter may then, at any time before the matter of the exceptions has been decided by the court, move to amend his pleading or give notice that he submits to any or all of the exceptions, in which case, on filing such notice, the clerk will enter, of course, the proper order i. e., that the defendant answer further, or more fully, or more distinctly, or that the irrelevant matter be stricken out.³¹

§ 398. Argument of Exceptions.

If there be any exceptions not submitted to, they are noticed for hearing before the court by either party, on four days' notice,³² and each exception is overruled or adjudged good and valid by the court, and as to such as are adjudged good and valid, the court must order the libellant to plead anew or the defendant to answer further within such time as the court shall in the order direct; and the court may also impose such costs on a defendant as may be reasonable.³³ And the court may also compel the defendant to make further answer, or it may direct the matter of the exception to be taken *pro confesso* against the defendant to the full intent and effect of the article of the libel which it purports to answer, as if no answer had been put in thereto.³⁴

§ 399. The Answer.

All parties defendant, and all parties intervening as defendants must put in an answer or answers to the allegations of the libel: a single pleading, when the interests of various defendants are one, and separate answers, when these interests are separate and particular. The answer must be on oath, or solemn affirmation, and must be full, explicit, and distinct to each separate article of the libel and each separate allegation in the libel, in the same order as numbered in the libel³⁵; mere general allegations, as that the vessel of the libel-

³⁰ Dist. Rule 42.

³¹ Ad. Rule, 28; Dist. Rules 42, 43, 44; *Town v. The Western Metropolis*, 28 How. Prac. 283; *The Dictator*, 30 F. R. 699; *The Intrepid*, 42 Id. 185.

³² Dist. Rule 42.

³³ Ad. Rule 28.

³⁴ Ad. Rule, 30; Dist. Rule 43, 44.

³⁵ Ad. Rule, 27; *Hutson v. Jordan*, Ware. 385; *The Crusader*, id. 437; *The Boston*, 1 Sum. 328; *Macomber v. Thompson*, id. 384; *Orne v. Townsend*, 4

lant lay in an improper manner, or in an improper place, without indicating in what way the manner or the place was improper, are hardly sufficient to constitute a valid defence.³⁶ The defendant must in like manner answer each interrogatory propounded at the close of the libel.³⁷

When the sum or value in dispute does not exceed fifty dollars, exclusive of costs, the foregoing requirements need not be observed, unless the court is of opinion that they are necessary for the purposes of justice in the case before it.³⁸ In the Southern District of New York, however, all libels and answers are required to be verified, regardless of the amount claimed, unless otherwise ordered by the court for cause.³⁹

§ 400. Defendant is not Bound to Incriminate Himself.

The defendant is not bound to answer any allegation or interrogatory contained in the libel, which will expose him to any prosecution or punishment for a crime, or to any penalty or any forfeiture of his property for any penal offence. He cannot pass by in silence such allegations or interrogatories, but must object to answer them on such grounds. The party himself and not his counsel, should make the refusal to answer upon this ground.⁴⁰ He is not bound to be personally present before the court before availing himself of the privilege.⁴¹ If his objection covers the whole matter of the libel, he may set up his exemption in a single exception to the proceeding. In other cases, he may unite his exception with his answer.⁴²

§ 401. Interrogatories to Libellant.

As the libellant has the right to propose interrogatories to the defendant, so the defendant has the right to resort to the oath of the libellant, and may, at the close of his answer, propose to the libellant any interrogatories touching any matters charged in the libel, or

Mason, 541; Dunlap's Prac. 197-210; Treadwell v. Joseph, 1 Sum. 391; The Commander in Chief, 68 U. S. (1 Wall.) 49; Dupont v. Vance, 60 U. S. (19 How.) 162; Virginia Home Ins. Co. v. Sundberg, 54 F. R. 389; The Dictator, 30 F. R. 699.

³⁶ The Commander in Chief, 68 U. S. (1 Wall.) 43.

³⁷ Ad Rule 27.

³⁸ Ad. Rule 48.

³⁹ Dist. Rule 1.

⁴⁰ In re Knickerbocker Steamboat Co., 136 F. R. 956.

⁴¹ In re Knickerbocker Steamboat Co., 139 F. R. 713.

⁴² Ad. Rule 31.

touching any matter of defence set up in the answer.⁴³ These interrogatories should be numbered, and the libellant must answer in writing in detail, under oath or solemn affirmation, each interrogatory in the order of their numbers. Like the defendant, the libellant is not bound to answer any interrogatory which will expose him to any prosecution or punishment for a crime, or to any penalty or any forfeiture of his property for any penal offence.

A form of interrogatories will be found in the Appendix, p. 639.

§ 402. Defendant may Except to Libellant's Answers.

In default of due answer⁴⁴ by the libellant to any interrogatories, the defendant may except to his answer, in the same manner that the libellant may except to the answers of the defendant. On the hearing of the exceptions, the court may adjudge the libellant in default and dismiss the libel, or may by attachment compel a further answer, within a time to be fixed by the court; or may take the subject-matter of any interrogatory which is insufficiently answered *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote justice.⁴⁵

§ 403. Time to Answer may be Extended.

If the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation, at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, extend the time, award a commission to take the answer of the party when and as soon as it may be practicable, or may dispense with it altogether.⁴⁶

§ 404. Reply.

To the answer of the defendant, even if the libellant does not admit its statements, no replication is necessary, or allowable, unless directed or allowed by the court. But see *ante*, § 300.

⁴³ Ad. Rules 23, 32; Conk. Treat. 2d edit. 356; Dunlap's Prac. 125; Scobel v. Giles, 19 F. R. 224; The Edwin Baxter, 32 id. 296; The Mexican Prince, 70 F. R. 246; In re Knickerbocker St'b't Co., 136 F. R. 956. Interrogatories to defendant, see *ante*, § 339.

⁴⁴ Due answers are answers which are full, explicit and distinct; see Ad. Rule 30. But mere errors of form and style in answer are not the subject of exceptions; New Haven Towing Co. v. City, etc., of New Haven, 116 F. R. 762.

⁴⁵ Ad. Rule 32.

⁴⁶ Ad. Rule 33.

§ 405. Several Defences may be Plead.

Formerly the pleadings might go on, by turns, so long as the mode of pleading might require it. They were called replications, duplications, triplications, quadruplications, and so on; but they are now obsolete, except as stated in § 300.

As the libel may set forth many causes of action, so any of the pleadings may set up as many distinct matters of defence, avoidance, or reply, as the case may afford.

§ 406. Interpleader.

Strictly the practice of interpleader has not prevailed in the admiralty. But the court would not hesitate to avail itself of the principle involved in that practice where it was deemed necessary. Thus where a libel was filed by the master of a vessel against a consignee of cargo to recover freight according to a bill of lading, and the consignee presented a petition to the court setting forth that the freight was claimed not only by such master but by an assignee of a charterer of the vessel, and praying that the consignee might be allowed to pay the freight into court and be discharged from liability and that both the master and such assignee might be restrained from proceeding against the charterer, the court granted the petition.⁴⁷

§ 407. Intervention. I.

There are many cases in admiralty in which the rights of one who is not a party to the suit may be so affected thereby that it is of the utmost importance that he should have an opportunity to be heard personally. Thus, where a libel for salvage has been filed by the owner or master of the salving vessel, the crew may desire to be heard personally for their own claims rather than to have their rights looked after by such owner or master. Where a libel for collision damage is filed by a ship-owner, an insurance company, which has paid the loss and hence by subrogation is entitled to recover its loss against the wrong-doer, may desire to press its claim itself.⁴⁸ There are many other cases where one may wish to appear on the plaintiff's side of the suit.⁴⁹ And on the defendant's side the situations are numerous which call for appearances other than that of the designated respondent or the actual owner of the property libelled. This is especially true of suits *in rem*, where the interests of many persons in the *res* may be

⁴⁷ *Copp v. The De Castro & Donner Sugar Refining Co.*, 8 Ben. 321. See *The Alert*, 40 F. R. 836.

⁴⁸ *The T. W. Snook*, 51 F. R. 244; *Mason v. Marine Ins. Co.*, 110 F. R. 452.

⁴⁹ See *The Two Marys*, 12 F. R. 152; *The Oregon*, 45 F. R. 62.

seriously affected or even destroyed, if the vessel is sold by the marshal under the claim of the libellant; such as the interest of a mortgagee,⁵⁰ or of an insurer, or of any one who may have a lien on the ship.

In such cases the party whose interests are affected may, by intervention, become a party to the suit already begun. In case of intervention for proceeds under Admiralty Rule 43, the intervenor must have a claim against the proceeds themselves, and cannot in such way enforce a claim against another party who has an interest in the proceeds.⁵¹ And the claim of an intervenor must be of a maritime nature, unless in the case of intervention against proceeds.⁵²

§ 408. Intervention. II. Method of.

Admiralty Rules 34 and 43 are the only rules referring to intervenors. Rule 34 in terms applies only to suits *in rem*, and to cases where the vessel is in custody or her proceeds are in court.⁵³ Without doubt the rule in this respect is not exclusive, and intervention may be had in suits *in personam* by the same method pointed out in Rule 34. That method is by petition to the court, setting forth and propounding the matter in suitable allegations. The petition must be accompanied by a stipulation to abide the final decree and pay all costs, damages and expenses which shall be awarded upon final decree.⁵⁴ The petition must be admitted by the court to give the intervenor proper standing in court.⁵⁵ That is, either an order directed to the parties to the suit to show cause why the petition of intervention should not be allowed, ought to be obtained before the petition is put on file, or a motion should be made for permission to file the petition; and an *ex parte* petition by way of defence to the libel, setting up matter different from the answer already on file, is not permissible. An order for intervention, obtained without notice, may be vacated.⁵⁶ If the petition of

⁵⁰ The *H. N. Emelie*, 70 F. R. 511; The *Clara McIntyre*, 94 F. R. 552.

⁵¹ *Sheldrake v. The Chatfield*, 52 F. R. 495.

⁵² The *Steamer Eclipse*, 135 U. S. 599. See *post*, § 506.

⁵³ The *Oregon*, 158 U. S. 186.

⁵⁴ Ad. Rule 34; Dist. Rule 7. Where the petitioner desires to intervene as a co-libellant, the amount of the stipulation would be the ordinary amount of a libellant's stipulation for costs, but where, for any reason, it appears that the intervention may cause damage, delay or expense to the parties already in the suit, the amount of the stipulation should be fixed by the court, after notice to the other parties, on the granting by the court of its order admitting the intervention. But parties intervening in a purely representative capacity need not give stipulation for costs; The *W. I. Hingston*, 144 F. R. 560.

⁵⁵ Ad. Rule 34; The *Clara McIntyre*, 94 F. R. 552.

⁵⁶ The *Alexandra*, 104 F. R. 904.

intervention is allowed, the other party or parties to the suit may be required by order of the court, to make due answer to the petition: and such further proceedings are to be had and decree rendered by the court as to law and justice shall appertain.⁵⁷

§ 409. Intervention. III—Intervenor's Right of Recovery.

An intervenor may apply for permission to come into the cause at any time before the final distribution of the proceeds,⁵⁸ but if he delays filing his petition until after the final decree of the court in the cause, he is bound by such decree, (unless he procures it to be opened), and can only be heard on questions as to the distribution of the surplus.⁵⁹ If a vessel has been attached under one libel, other lienors having claims may intervene and pray for warrants of attachment, in order to prevent the release of the vessel on bond running solely to the original libellant.⁶⁰ For it is the rule that a stipulation, given to release a vessel from a particular claim and not for the full value of the vessel, does not enure to the benefit of parties who thereafter intervene in the suit, but the whole benefit of the stipulation is for the original libellant.⁶¹ But this rule would not apply when the intervenor simply takes the place of an original party to the suit, as an insurance company, by subrogation, may take the place of the ship or cargo owner.⁶²

§ 410. The Fifty-Ninth Rule.

In the year 1883 a libel was filed in the District Court for the Southern District of New York by the owner of a barge which, while in tow of the steam tug E. A. Packer, had been damaged by collision with the steam tug Hudson. The owner of the barge libelled the Hudson alone, whereupon the owner of the Hudson filed a petition, charging fault on the part of the tug E. A. Packer also in bringing about the collision, and moved that the latter vessel be brought in as co-defendant, in order that the libellant's damages might be apportioned between the two tugs, as would have been done had the libel been originally filed against both tugs and fault on the part of both

⁵⁷ Ad. Rule 34.

⁵⁸ *The St. Johns*, 101 F. R. 469; *Mason v. Marine Ins. Co.*, 110 F. R. 452.

⁵⁹ *Mason v. Marine Ins. Co.*, 110 F. R. 452; *The Jas. G. Swan*, 106 F. R. 94.

⁶⁰ *Butler v. The Julia*, 57 F. R. 233.

⁶¹ *The Oregon*, 158 U. S. 186; *The T. W. Snook*, 51 F. R. 244; *The Willamette*, 70 F. R. 874; *Hawgood, etc., Co. v. Dingman*, 94 F. R. 1011. See *post*, § 421.

⁶² *The Livingston*, 104 F. R. 918.

had been found.⁶³ At the time, the Supreme Court had recently held in the case of the *Atlas*,⁶⁴ that a libellant in such case might pursue and recover his whole damages from one of two defendants, both of whom were guilty of negligence. The District Court, in the case of the *Hudson*, showed that, even if there were a right of contribution over by the one defendant which might be compelled to pay the whole damage, that remedy would in many cases become practically worthless through the intervening delay, the loss of the other vessel, the accumulation of superior intervening liens, or the absence of the second vessel from the jurisdiction. For which reasons and others, the District Court held that it was just and equitable, and the court had the power to summon, as a co-defendant, another defendant alleged to be solely liable or equally liable with the defendant actually sued. The matter being thereafter brought to the attention of the Supreme Court, the practice commended itself to the judgment of that court, and it promulgated the 59th Admiralty Rule,⁶⁵ which authorized and formulated the practice of bringing in a co-defendant on petition of a defendant already sued.

The 59th Rule, in terms, confines the practice to collision cases. But the case of the *Hudson*, which led to the adoption of that rule, was itself based upon no rule, but only upon the inherent power of a court, which has jurisdiction of a cause, to bring into the suit other parties whose presence would enable the court to do substantial justice in regard to the entire matter. And, acting upon the same inherent power, the courts have extended the practice to many other cases besides cases of collision,⁶⁶ until it has been said that the principle is applied by analogy to assist in the administration of justice by requiring the appearance of any additional defendant who may be responsible for the claim or a part thereof.⁶⁷ This has resulted in the anomaly that a defendant, who could not be originally sued in the admiralty, may by this procedure be brought into an

⁶³ *The Hudson*, 15 F. R. 162.

⁶⁴ *The Atlas*, 93 U. S. 302.

⁶⁵ See *In re New York, etc.*, S. S. Co., 155 U. S. at p. 528.

⁶⁶ *The City of Lincoln*, 25 F. R. 835; *Canal boats Nos. 1758 and 1892*, 32 F. R. 553; *The John Cottrell*, 34 F. R. 907; *The Alert*, 40 F. R. 836; *The Centurion*, 57 F. R. 412; *Public Bath No. 13*, 61 F. R. 692; *Hastorf v. Supply Co.*, 110 F. R. 669; *Dailey v. City of New York*, 119 F. R. 1005; *The Crown of Castile*, 148 F. R. 1012; *The Cerea*, 149 F. R. 924; *Evans v. N. Y. & P. S. S. Co.*, 163 F. R. 405; *The Barnstable*, 181 U. S. 464.

⁶⁷ *Daily v. City of New York*, 119 F. R. 1005.

admiralty suit and be there held liable.⁶⁸ Whether such an extension of the theory of Rule 59 will meet with the approbation of the Supreme Court or not remains to be seen. It is to be hoped that it will, for in spite of the occasional anomaly above mentioned there is no doubt but that the general practice is an aid to speedy and substantial justice among all parties to such controversies.

In the Southern District of New York, when such a petition is dismissed, the costs of the party so brought in must be borne by the petitioner, even though the libel itself be dismissed.⁶⁹ In other districts, under such circumstances, the costs of both original defendant and new party brought in are taxed against the unsuccessful libellant.⁷⁰

With the filing of the answer, or within such further time as the court may allow, file a petition, setting forth the facts which show fault on the part of the third party, or other vessel sought to be charged, with a prayer that he or it may be made co-defendant in the suit, and praying process in that behalf. With the petition, file a stipulation in \$250, conditioned to pay to the libellant or to the new party brought in all such costs, damages and expenses as may be awarded against the petitioner by the court upon final decree, whether an appeal intervene or not. Issue process to the marshal. The vessel or new party brought in must give the same security as though the libel had originally been filed against it or him. The libellant must answer the petition. The petitioner has already answered the libel. The new party brought in must answer both libel and petition.⁷¹ For form see Appendix, p. 626.

§ 411. Contribution between Wrong-Doers.

In addition to the power of an Admiralty Court to bring in additional defendants, not named by the libellant in the libel and the original process, the court has power to entertain an independent suit, by one of two or more wrong-doers who has been compelled to pay the whole damages arising from such wrong, against the other wrong-doers, to obtain contribution and partial recoupment of the sum he has

⁶⁸ *Evans v. N. Y. & P. S. S. Co.*, 163 F. R. 405. Where the District Court has general jurisdiction of the subject matter and the parties, the remedy of a party who deems that he has been improperly brought in by petition under the 59th Rule is by appeal, not by prohibition from the Supreme Court; *In re New York, etc., S. S. Co.*, 155 U. S. 523.

⁶⁹ *The Brothers*, 30 F. R. 75; *The John Cottrell*, 34 F. R. 907; *The Waverley*, 42 F. R. 188; *The Charles Tiberghien*, 148 F. R. 1016.

⁷⁰ *The Maurice*, 130 F. R. 634.

⁷¹ *The Greenville*, 58 F. R. 805.

been so compelled to pay.⁷² The theory of the action is that the right to contribution between wrong-doers is an incident of the joint liability in admiralty, and the admiralty court is entitled to work out its own system of adjustment of various rights. This it will ordinarily do by summoning at the outset of the litigation all parties who may eventually be held liable, and passing at one time upon the various questions of individual liability. But if for any reason, that procedure is impossible, then the inherent right of the court to adjust differing liabilities gives it the power to entertain the independent suit spoken of.

In the *Ira M. Hedges*,⁷³ it was held that such right of contribution did not extend so far as to compel contribution from one of two wrong-doers who had been sued *at law*, and compelled to pay the whole damage.

§ 412. Consolidation of Suits.

Where there are a number of suits against the same *res*, none of which can be wholly disposed of without having regard for the others, the court has the power to consolidate them into one suit, even though there be no common interest among the demanding parties.⁷⁴ The District Courts for the Southern and Eastern Districts of New York have formulated a rule upon the subject.⁷⁵ Thus, there may be a number of independent libels for salvage filed against the same vessel for services rendered, for instance, on the occasion of a fire on a ship:⁷⁶ or a number of libels for materials furnished at different times to the vessel.⁷⁷ And claims of entirely different character may thus be consolidated.⁷⁸ The practice not only enables the court to obtain a fuller view of the general situation and to make a decree protecting all rights, but results in a saving in the matter of costs.⁷⁹

⁷² *Erie R. R. Co. v. Erie Trans. Co.*, 204 U. S. 220; *The Mariska*, 107 F. R. 989.

⁷³ *The Ira M. Hedges*, 163 F. R. 587.

⁷⁴ *The Eliza Lines*, 61 F. R. 308; 114 F. R. 307; *The Prinz Georg*, 23 F. R. 906; *The Queen of the Pacific*, 61 F. R. 213.

⁷⁵ D. C. Rule 5.

⁷⁶ *The Bay of Naples*, 44 F. R. 90; *The Bremen*, 111 F. R. 228.

⁷⁷ *The Eliza Lines*, 61 F. R. 308.

⁷⁸ *The Eliza Lines*, 61 F. R. 308.

⁷⁹ See *post*, § 490.

CHAPTER XXVI.

AMENDMENTS AND SUPPLEMENTAL PLEADINGS.

§ 413. Amendments may be allowed by the Court at any Time.

It has always been the practice in the American admiralty courts to allow every facility to the parties to place fully before the court their whole case, and to enable the court to administer substantial justice between the parties, without circuitry of action or turning round in court, and never to allow a party to overcome his adversary by the mantraps and spring guns of covert chicanery, or by the surprises and technicalities of mere pleading or practice. Therefore, on proper cause shown, omissions and deficiencies in pleadings may be supplied, and errors and mistakes in practice, in matters of substance as well as of form, may be corrected at any stage of the proceedings, for the furtherance of justice. Where merits clearly appear on the record, it is the settled practice in admiralty not to dismiss the libel, but to allow the party to assert his rights in a new allegation,¹ unless the amendment will prejudice the other party.² The courts have even held that a libellant who has shown a meritorious case may at the close of the case be permitted to amend to conform his pleading to the evidence,³ even though it result in a change of claim from tort to contract.⁴ But this is matter of discretion.⁵ The whole subject rests entirely in the discretion of the court, as well in relation to the re-

¹ Dist. Rule 3; *The Adeline*, 13 U. S. (9 Cranch), 244; *The Edward*, 14 U. S. (1 Wheat.) 261; *The Divina Pastora*, 17 U. S. (4 Wheat.) 52; *The Edwin Post*, 6 F. R. 206; *The Monte A.*, 12 id. 331; *The Imogene M. Terry*, 19 id. 463; *The Corozal*, id. 655; *The Manhasset*, id. 430; *The George Taulane*, 22 id. 799; *The Alanson Sumner*, 28 id. 670; *The Gen. Sedgwick*, 29 id. 606; *The Keystone*, 31 id. 412; *The Thomas Melville*, 31 id. 486; *The Louisiana*, 37 id. 264; *N. H. St. Co. v. The Mayor*, 36 id. 716.

² *The Edwin Post*, 6 F. R. 206; *The Imogene M. Terry*, 19 F. R. 463; *The Corozal*, 19 F. R. 655; *O'Connell v. Hemp*, 75 F. R. 408; *The Iona*, 80 F. R. 933; *The Habil*, 100 F. R. 120; *Harrison v. Hughes*, 119 F. R. 997; *Graham v. Oregon R. & N. Co.*, 134 F. R. 692.

³ *The Minnetonka*, 146 F. R. 509.

⁴ *Davis v. Adams*, 102 F. R. 520.

⁵ *The Wildenfels*, 161 F. R. 864.

lief to be granted, as to the terms on which it shall be granted,⁶ but the court is inclined to invite amendments if at any time a proctor discovers that his pleadings are incorrectly drawn.⁷ Amendments may be made on application to the court at any time, as well after as before decree; and at any time before the final decree new counts or articles may be added, and new and supplemental allegations may be filed,⁸ and this may be done after the cause is in the appellate court, if the new allegations be confined to the original subject of controversy. A new cause of action,⁹ or a new defence, however, cannot be permitted by amendment after the evidence is taken,¹⁰ nor can a new subject of controversy be thus inserted in the appellate court.¹¹ As to amendments in the appellate court, see *post*, § 583.

§ 414. Amendments of Course—Death of Party.

Before any pleading is answered, or the opposite party has taken any subsequent step in the cause, amendments may be made, of course, without previous notice to the opposite party or application to the court.¹² In such cases, the amendment must be filed with the clerk, and if it be after the appearance of the opposite party, a copy of it.

⁶ See Rev. Stat. § 954.

⁷ *Palmer v. M. & M. T. Co.*, 154 F. R. 683.

⁸ *Eight Hundred and Forty-one Tons of Iron Ore*, 15 F. R. 615; *The Tubal Cain*, 9 id. 834; *Three Hundred Tons of Iron Ore*, 38 id. 36; *The J. E. Trudeau*, 54 F. R. 907; *O'Connell v. Hemp*, 75 F. R. 408. Where a libel has been filed against the wrong party as owner of a vessel, and the true owner has appeared and bonded, the libel may be amended to set out the true owner, and the liability of the sureties will not be affected by such amendment; *Boden v. Demwolf*, 56 F. R. 846. But after a cause has been tried and appealed and sent back for trial of a particular issue, the answer may not be amended on another issue; *Burrill v. Crossman*, 111 F. R. 192. But a libel *in rem* cannot be changed by amendment to one *in personam* against the ship owner, when no monition has been issued against such owner and he has not appeared in the *rem* suit except to release the ship; *The Lowlands*, 147 F. R. 986; see *The Bencliff*, 161 F. R. 909. The taking of an appeal within the time allowed is a waiver of the right to amend; *The Three Friends*, 166 U. S. 1.

⁹ *The Ask*, 156 F. R. 678.

¹⁰ *Brennan v. Peter Hagan & Co.*, 147 F. R. 290.

¹¹ *Ad. Rule 24*; *Jenks v. Lewis, Ware*, 51; *The Edward*, 14 U. S. (1 Wheat.) 261; *The Palmyra*, 25 U. S. (12 Wheat.) 1; *The U. S. v. Four Part Pieces of Woollen Cloth*, 1 Paine, 435; *Jud. Act. § 32*; *Conk. Treat.* 2d ed. 357, 360; *Elwell v. Martin, Ware*, 53; *Pratt v. Thomas*, id. 437; *The Adeline*, 13 U. S. (9 Cranch), 244; *Crawford v. The William Penn*, 3 Wash. 484; *The Marianna Flora*, 24 U. S. (11 Wheat.) 1; *Town v. The Western Metropolis*, 28 How. Pr. 283.

¹² *Vide Thomas v. Gray, Blatchf. & H.* 493; also § 418.

should be served on him. The same rule as to verification by oath applies to the amendment as to the original pleading.

In case one of several plaintiffs or defendants dies before final judgment, if the cause of action survive to or against his co-partners, the suit does not abate by such death, but a suggestion of the death is made on the record, and the suit proceeds in the name of the survivors.¹³

In case a sole plaintiff or defendant dies before the final judgment, and the cause of action by law survive, the executor or administrator of the deceased party has full power to prosecute or defend the suit to final judgment; and the court and the opposite party are bound to consider the executor or administrator as the real party. The executor, however, is always entitled to a continuance of the cause, on motion, till the next term, but the other party has not such right.¹⁴ The Supreme Court has construed section 955 of the Revised Statutes in a common law case,¹⁵ holding that, after the order allowing the appearance of the executor, it is too late to contest the fact of his being an executor. It is apparent, therefore, that the executor's motion should be made on notice to the other party, to enable him to contest that fact.

If the executor or administrator neglect or refuse to appear and make himself a party, the court may issue process requiring him to show cause why the action should not proceed; and if he fail to appear within twenty days after service of such process, then the court may proceed and render judgment against the deceased party, in the same manner as if the executor or administrator had voluntarily made himself a party to the suit.¹⁶ The practice of the Southern District of New York, in cases where a new party is necessary, is for the new party or the adverse party to file a petition asking for the substitution of such new party. The petition must allege briefly the

¹³ See *U. S. v. Sampson*, 187 U. S. 436.

¹⁴ Rev. Stat. § 955; Dist. Rule 6; *The Adeline*, 13 U. S. (9 Cranch), 244; *The Edward*, 14 U. S. (1 Wheat.) 261; *The Marianna Flora*, 24 U. S. (11 Wheat.) 1; *The Caroline v. The U. S.*, 11 U. S. (7 Cranch), 496; *The Harmony*, 1 Gal. 123; *Jenks v. Lewis, Ware*, 51; *Houseman v. The North Carolina*, 40 U. S. (15 Pet.) 40; *The Boston*, 1 Sum. 328; Jud. Act, § 31; *Dunlap*, 87; *Wilson v. Codman's Executor*, 7 U. S. (3 Cranch), 193; *Griswold v. Hill*, 1 Paine, 483; *Nevitt v. Clarke, Olc.* 316; *Vide The Octavia*, 1 Mason, 149; *The Cadiz*, 20 F. R. 157; *The E. B. Ward, Jr.*, 23 F. R. 900.

¹⁵ *Wilson v. Codman's Executor*, 7 U. S. (3 Cranch), 193.

¹⁶ Rev. Stat. § 955; *Wilson v. Codman's Executor*, 7 U. S. (3 Cranch), 193; *Griswold v. Hill*, 1 Paine, 483.

prayer of the original libel, the interest which the new party has in the action, and the several proceedings in the cause with the dates, closing with the prayer that the new person required to be made a party may be made such party. Notice of the presentation of the petition must be given to the other side, and to the party sought to be impleaded, and, on hearing, the court will make the proper order. The same stipulation and security is required of such new party as is required of original parties.¹⁷

§ 415. Certainty and Precision in Pleading are Important.

Answers, as well as libels, and indeed all pleadings, should state the matter with due certainty and precision. In case of misconduct set up, there must be special allegation of the facts, with due certainty of time, place, and circumstances.¹⁸ Any responsive pleading should reply to each article by a clear and exact admission, or denial, or defence to the matter of it. Proper certainty and precision are of the greatest importance; for as the party cannot regularly prove that which is not properly alleged, so it is not sufficient that there are facts proved which might have a material bearing, unless there are allegations suited to bring them before the court as matters of plea and controversy.¹⁹

But the mere omission to allege a fact which proves to be material will not prevent the court from giving it its proper weight, even on appeal.²⁰

§ 416. Alternative Pleading—Bar to Second Suit.

A libellant may be in doubt as to a vital point in a case, e. g., the home port of the vessel libelled, which would affect the question as to whether an alleged lien for supplies should be pleaded as a maritime or statutory lien. In such case it is proper to plead in the alternative, and proceed to judgment under the claim which proves to be the correct one.²¹ For if under such circumstances, the libellant pleads on one theory of lien alone, he cannot thereafter, by a subsequent pleading, set up another theory of lien.²²

¹⁷ Dist. Rule 6.

¹⁸ *The Alexandra*, 104 F. R. 904.

¹⁹ *The Boston*, 1 Sumn. 328; *Macomber v. Thompson*, id. 384.

²⁰ Dist. Rule 46; *The Syracuse*, 79 U. S. (12 Wall.) 167; *The Gazelle*, 128 U. S. 474; *The Alps*, 19 F. R. 139.

²¹ *The New Brunswick*, 125 F. R. 567.

²² *The New Brunswick*, 125 F. R. 567.

§ 417. Supplemental Pleadings.

The general rule is that the whole substantive case of a party should be at once brought before the court, but supplemental pleadings (libel, answer, interrogatories, or exceptions), may be filed whenever new parties, new allegations, or a more full, definite, or accurate statement of the subject-matter of the controversy may be necessary, and supplemental pleadings are the proper mode of bringing before the court such new matter.²³ The usual office of a supplemental pleading is to bring before the court a matter which has happened or which has been discovered since the filing of the original pleading. It does not involve the idea of an error in the original pleading, which idea is conveyed by an amended pleading. Thus, if a libel is filed against a ship for a short delivery of cargo, and afterwards it appears that the delivery may not be short but that probably the whole cargo has been delivered, though a part is in a damaged condition, a supplemental libel, alleging the damage to the cargo, would be proper to bring the whole claim before the court. A supplemental libel may be allowed to stand as an original libel.²⁴

§ 418. Any Pleading may be Amended—Notice of Filing Papers—Service of Papers.

When any pleading or paper is defective in form, or substance, it may be amended, and any party may, at any time, thus correct his papers by further, or more full and regular, supplemental, amendatory, exceptive, or responsive allegations to be filed in the cause.

A libellant may correct his pleading before any appearance has been entered, as of course; but after appearance, a motion for leave to amend should be made by either party who desires an amendment.

Parties are not required to furnish copies of original pleadings to the adverse party, but only to give notice of the filing thereof, and each party is required to take out copies from the clerk's office, though for general convenience the practice prevails of both filing the original paper, and serving a copy.

When such further papers are put in, if they affect the proceedings in any material point, the opposite party will be entitled to the indulgence of the court, in a continuance of the cause.

²³ *The Ebenezer*, 7 Jur. 1117; *Betts' Prac.* 21; *Waring v. Clarke*, 46 U. S. (5 How.) 441; *Cutler v. Rae*, 48 U. S. (7 How.) 729; *Moorsom v. Moorsom*, 3 Hag. Ecc. 97; *The Virgil*, 2 W. Rob. 204; *The Speed*, id. 227; *The Syracuse*, 79 U. S. (12 Wall.) 167; *The Gazelle*, 128 U. S. 474; *Eight Hundred, etc., Tons of Iron Ore*, 25 F. R. 864.

²⁴ *Henderson v. Three Hundred Tons of Iron Ore*, 38 F. R. 36.

CHAPTER XXVII.

STIPULATION AND BAIL.

§ 419. Usual Form of Security.

Security for costs is always required of both parties, on their appearance, whether the parties are resident or non-resident, except in cases of seamen for wages, salvors in possession of the property saved, petitioners for money in the registry of court, and those who sue in *forma pauperis*. The Government, and, in the New York districts, the City of New York, may also dispense with the security for costs. See post, § 425. Security to answer the libellant's demand must also be furnished whenever property is attached and released, whether in suits *in rem* or in suits *in personam* with process of attachment. The necessity for furnishing security in advance renders the judgment of an admiralty court almost invariably collectable, and the result of being successful in court but "beaten on execution" is rarely reached. The usual mode of giving security or bail, in admiralty, is by stipulation, instead of the common law mode of bond or recognizance under seal. No particular form of words is necessary to constitute a stipulation. It is sufficient if it appear that the party stipulating undertakes to respond, according to the legal requisition; and a bond or recognizance would be held good in the admiralty court.¹ The usual form of the admiralty stipulation briefly recites the pendency of the suit, and closes by distinctly assuming the required obligation. It is executed without seal, and should be acknowledged by the party and the stipulator before the court, the clerk, a commissioner or a notary public.²

§ 420. Stipulations are Governed by the Law or the Court, not the Will of the Party.

Stipulations differ from other contracts in an important particular. In contracts between parties, it is the intention of the parties, as expressed in the instrument, which is to govern the construction, but the

¹ See *U. S. v. The Haytian Republic*, 59 F. R. 476; *Munks v. Jackson*, 66 F. R. 571.

² *Dunlap's Prac.* 143; *Lane v. Townsend*, Ware, 239; *Ency. de Jurisp.*, art. *Stipulation*; *Conk. Treat.* 427.

security which is taken in the progress of a suit in a court of admiralty, for the purpose of sustaining and enforcing its jurisdiction and authority, is taken under the order of the court, or of the law. Its terms are directed by the law or the court, and as the will of the party is not consulted as to the tenor of the obligation, so his will or intention is not regarded in its interpretation. If, therefore, there be an ambiguity in the terms of the stipulation, or if the construction of them be doubtful, it is not the intention of the party for which we are to inquire, for the will of the party had nothing to do in determining its conditions; the doubt must be removed by consulting the intention of the court, or the law or rule which required the stipulation and dictated its terms.³ And therefore the stipulators have not all the technical rights which belong to sureties on a bond under the common law.⁴

§ 421. Re-arrest after Security Given—For Whose Benefit is Bond.

Stipulations or bonds take the place of the vessel, and the latter cannot be re-arrested in the same suit,⁵ unless in case of a fraudulent appraisement or bond, in which case the court has power to recall the vessel for the purpose of requiring an honest appraisement and of exacting a legal bond.⁶ The stipulation or bond takes the place of the vessel only for the purposes of the suit in which the bond is given and it is not available to satisfy the claims of other creditors,⁷ except in limitation of liability proceedings, and where the stipulation is given for the whole value of the vessel to answer any claim which may be filed against her.⁸

³ *Lane v. Townsend*, Ware, 289; *Cure v. Bullus*, 7 N. Y. Leg. Obs. 345; *Harriman v. Rock. B. Pier Co.*, 8 F. R. 94; Dist. Rule 21.

⁴ See *post*, § 433.

⁵ *The Union*, 4 Blatch. 90; *The White Squall*, Id. 103; *The Nahor*, 9 F. R. 213; *Johnson v. The Hattie Bell*, 65 F. R. 119; *The Mutual*, 78 F. R. 144; *The Cleveland*, 98 F. R. 631.

⁶ *U. S. v. Ames*, 99 U. S. 35; *The Haytian Republic*, 154 U. S. 118; *The Gran Para*, 10 Wheat. 497; *The Union*, 4 Blatch. 90; *The Favorite*, 2 Flip. 86; *The Thales*, 3 Ben. 327; 2 Pars. Ship. 411; *The Cleveland*, 98 F. R. 631. But only before judgment; after that there is no power to re-arrest; *The Hattie Bell*, 65 F. R. 119.

⁷ *The Haytian Republic*, 154 U. S. 118; *The Oregon*, 158 U. S. 186; *The T. W. Snook*, 51 F. R. 244; *Hawgood, etc., Co. v. Dingman*, 94 F. R. 1011.

⁸ *The Oregon*, 158 U. S. 186; *The Willamette*, 70 F. R. 874; 72 id. 79. But where libellant filed a libel against a vessel for damage to cargo and it was discovered that the vessel had been previously sold in a collusive suit by her master, and the court ordered the sale set aside unless claimant gave bond and claimant gave the ordinary claimant's bond, it was held that such bond might be availed of by the libellant in the first named suit; *The New*

§ 422. Deposit of Money—Excepting to Sureties.

Instead of a stipulation with personal surety, the court will allow a deposit of money in the registry of the court, as security.⁹

When personal sureties are given, they are required to swear to their responsibility to twice the amount of the sum for which they undertake, over and above all debts, but it is not necessary that they should be owners of real estate.

If any party in interest desire a more strict inquiry into the responsibility of the sureties, he may, by an exception and notice thereof to the opposite party, or by a refusal to approve the stipulation, require that the sureties appear personally before the court, or a commissioner, and submit to a strict examination as to their property and responsibility.¹⁰

§ 423. Further Security may be Compelled.

If either party put in insufficient sureties, or the sureties become irresponsible or insufficient, or remove out of the district, on proper application the court will compel further security, under the penalty of a stay of the proceedings in case of a libellant, or, in case of defendants, by striking out the answer, and denying the right to the party further to appear and contest the suit.¹¹ The court may also reduce the amount of an unduly large stipulation, given under a misapprehension.¹²

§ 424. Different Kinds of Stipulations.

The stipulations taken in the course of an admiralty cause are of several kinds. Under the Roman practice they were classified in various divisions and subdivisions, according to their nature, according to the occasion calling for them, and according to their form; but this classification is obsolete, and the learning connected with it is of little practical utility.

York, 93 F. R. 495, aff'd 113 F. R. 810. Sureties may have such knowledge of intervening petitions and acquiesce therein to such an extent that they will be held estopped from asserting that their stipulation was only to the libellant and not to the intervenors; *The Livingstone*, 104 F. R. 918. And when a bond was given in a suit *in rem* to recover for personal injuries, it was held that it was not extinguished by the death of the plaintiff and the continuance of the suit by his personal representatives, though the latter might not, originally, have had the right to sue *in rem*; *The City of Belfast*, 135 F. R. 208.

⁹ Ad. Rules 10, 11.

¹⁰ D. C. Rule 22.

¹¹ *The Virgo*, 13 Blatchf. 255; *The City of Hartford*, 11 F. R. 89; *The Fred M. Lawrence*, 88 F. R. 910, aff'd 94 F. R. 1017.

¹² *The Iris*, 100 F. R. 104.

In the case of *Lane v. Townsend*,¹³ Judge Ware, with characteristic learning and acuteness, presented the subject very clearly and correctly, as the matter stood before the promulgation of the admiralty rules of the Supreme Court.

In the District Court now, the stipulations for costs, for costs and damages, for value, to appear and abide the decree of the court, and pay the amount recovered, are the only stipulations practically in use. They vary slightly in their form, to adapt them to the various purposes to which they are applied in the original and appellate courts.¹⁴ The security given on appeal is in the form of a bond and not an admiralty stipulation, and is treated of hereafter, *post*, §§ 575, 576.

§ 425. Libellants and Defendants Stipulation for Costs.

The libellant's stipulation for costs *in personam* and *in rem*, is for the payment of all costs awarded against him by the court, or, upon an appeal, by the appellate court,¹⁵ and should be for \$250 in cases *in rem* and \$100 in cases *in personam*.

In case of libels *in personam*, where no bail has been taken and no property attached to answer the exigency of the suit, the Supreme Court has provided that the District Court may, in its discretion, require the defendant to give a stipulation, with sureties, in such sum as the court may direct, to pay all costs and expenses which may be awarded against him in the suit, upon the final adjudication thereof, or upon any interlocutory order in the progress of the suit.¹⁶ The New York districts have so exercised their discretion, by rule, as to require such defendant to give a stipulation for costs in the sum of \$100, before his appearance or answer will be received.¹⁷

§ 426. Claimant's Stipulation for Costs.

In case of filing a claim to property attached *in rem*, the claimant must file a stipulation, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon appeal, by the appellate court.¹⁸ The claimant's property being in custody, he is properly liable only for costs.

¹³ *Lane v. Townsend*, Ware, 289.

¹⁴ Ad. Rules 3, 4, 10, 11, 25, 35; Dist. Rule 17.

¹⁵ Dist. Rule 7.

¹⁶ Ad. Rule 25.

¹⁷ Dist. Rule 7. This rule indicates the classes of persons who may sue without giving stipulation for costs. In addition to those enumerated, the United States Government is not required to give security for costs.

¹⁸ Ad. Rule 26; Dist. Rule 7.

§ 427. Intervenor's Stipulation.

If any third person intervene in any admiralty cause *in rem* for his own interest, he is required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.¹⁹ There are obvious reasons why a third person intervening in a suit *in rem* should be responsible for damages as well as costs. The admiralty rule governing such stipulations confines it to suits *in rem* and does not state the amount of the stipulation required. But an intervenor's stipulation for costs is required in all cases *in personam* as well as *in rem*, and it is sufficient, in ordinary cases, that an intervenor give a stipulation at first in the sum of two hundred and fifty dollars for costs, expenses and damages, subject to increasing the same, on order of the court, if it appear that his intervention is likely to prove costly to the other parties to the suit.²⁰ A person intervening in a purely representative capacity, e. g., a state officer intervening in a possessory suit to defend the seizure of a vessel for violation of an Act of the State, is not necessarily required to give a stipulation for costs.²¹

§ 428. Defendant's Stipulation on Arrest of Person or Property in Suits in Personam.

The stipulation of bail to the action *in personam* is given on the arrest of the party, or on his appearing, in discharge of his property or credits attached. The stipulation is, that he will appear in the suit, and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court.²² On this stipulation formerly the bail had no right to surrender their principal, nor had the principal any right to surrender himself in discharge of the bail. The stipulation was an absolute undertaking to pay the decree.²³ But this has been changed by Rule 24 of the Southern and Eastern Districts of New York, which provides that stipulators on arrest of a defendant may be discharged on surrender of their principal. In *Stone v. Murphy*,²⁴ the District Court for the

¹⁹ Ad. Rule 34.

²⁰ Dist. Rules 7, 23.

²¹ *The W. J. Hingston*, 144 F. R. 560.

²² Ad. Rules 3, 4.

²³ *Lane v. Townsend*, Ware, 289; *Malynes*, 88.

²⁴ *Stone v. Murphy*, 86 F. R. 158.

District of Oregon called attention to Admiralty Rule 47, and held that, in Oregon, a defendant arrested on a libel for injuries inflicted on the high seas was entitled to discharge on bond conditioned to render himself amenable to the process of the court, and that he could not be compelled to give bond conditioned to pay the final decree.

§ 429. Claimant's Stipulation in Suit in Rem.

The stipulation of bail in a suit *in rem* is given to procure the discharge of the property proceeded against. It has been before remarked, that on such a discharge the owner takes the property *cum onere*, and it remains in his hands, subject to all the liens which legally attach to it. It is only necessary, therefore, that he give security to pay what the libellant may recover, leaving all other persons to assert their demands by a new proceeding *in rem*, after the discharge. The owner is therefore required, before taking his property, to give a stipulation, with sureties, in such sum as the libellant will consent to accept or as the court shall direct, to abide by the decree, and pay the money awarded by the final decree rendered by the court, or, in case of appeal, by the appellate court.²⁵ If the claimant himself signs such a stipulation, he will be personally liable for any excess of damages which may be proved over and above the amount of the stipulation.²⁶ But not when he gives a stipulation for the full value.

§ 430. Stipulation for Value.

The stipulation for value is given in a suit *in rem*, where the suit is brought, not to enforce a partial lien upon the property, but to recover a sum greater than the value of the *res*, or to sell the property, as in cases of seizure, of licitation, of salvage, or suits against recusant owners. In all such cases, where a party is entitled to have the property delivered on bail, he is bound to stipulate, with sureties, to pay the full value of the property. And in any case, a party may have his property delivered to him, on his giving the proper stipulation, with sureties, for the full value of the property. This value is ascertained by an appraisement by sworn appraisers, to be appointed by the court on motion and hearing of the parties. If there is a dispute among the appraisers as to the value, the court should exact a stipulation in the highest appraised value, since the amount of the stipulation does not fix the amount of the liability of the ship owner, and the exact value

²⁵ The *Langdon Cheves*, 2 Mason, 59; The *Palmyra*, 25 U. S. (12 Wheat.) 1; Ad. Rules 10, 11; Dist. Rule 17.

²⁶ The *Southwark*, 129 F. R. 171. See *post*, § 473.

of the ship, and consequently, the liability of the owners, may be shown on final hearing.²⁷ The value being ascertained, the claimant must give a stipulation, with sureties, in that amount, to the effect that he will, on the interlocutory or final order or decree of the court, or, in case of appeal, of the appellate court, on notice of such order or decree to the proctor for the claimant, pay into court the sum ascertained as the value.²⁸

§ 431. Companies as Sureties.

The law of the State of New York and of certain other States allows certain companies to become surety on a bond or undertaking. The United States courts do not recognize in their rules such a company as surety. And a stipulation so signed cannot be filed as a matter of right. By the consent of the other party to the suit, however, such stipulations may be received by the clerks of the court, and, as matter of fact, they are frequently given. When so given, the premium paid the surety company, or to the bank if a bank is surety, is usually taxable as a disbursement.²⁹

§ 432. Stipulations in Possessory Suits.

As possessory suits are brought to recover the vessel herself, and not money damages, the object of the suit would be lost if claimant, on attachment, were entitled as matter of right to the return of the vessel on his filing a bond or stipulation for value. Therefore the *res* ordinarily remains in the custody of the marshal until the hearing and determination of such a suit, and the court will always expedite the hearing, on motion, so as to cause as little detention as possible.³⁰ In special cases, and on cause shown, and on such security and terms as are ordered by the court, the latter usually to the effect that the vessel herself will be returned without waste to the marshal on order,

²⁷ *The Twilight*, 138 F. R. 1005.

²⁸ Ad. Rules 10, 11.

²⁹ *The South Portland*, 95 F. R. 295; *Jacobsen v. Lewis, etc., Co.*, 112 F. R. 73; *The Bencliff*, 158 F. R. 377; *The John D. Dailey*, 158 F. R. 642; *The Hurstdale*, 171 F. R. 607; *Contra*, *The Willowdene*, 97 F. R. 509; and see *The Robert Dollar*, 116 F. R. 79.

³⁰ *The Rainbow*, 1 Ben. 40. See *The Brisk*, 4 Ben. 252. District Rule 11 of the New York Districts provides for a short return day in possessory suits, for answer to be filed on the return of process, for immediate fixing of a day for hearing, and for dispensing with notice by publication. The opinion of the court in the *Poconoket*, 61 F. R. 106, Eastern District of Pennsylvania, states a different practice from that set out in the text. But the opinion seems to be *obiter* on the point in question, for the decision was on a rule that the libellant, not the claimant, should furnish security.

a bond or stipulation may be substituted for the vessel.³¹ In a petitory suit, following a possessory suit, the property may be delivered to the prevailing party in the possessory suit on his giving a stipulation to the above effect.³²

§ 433. Liability of Sureties.

A surety in an admiralty proceeding does not have all of the technical ways of escaping liability on his stipulation which are open to a surety on a bond given in an action at law. The contract of a surety in admiralty, as at law, is *strictissimi juris*, and cannot be changed by implication.³³ But his contract is made with the court and not with a party to the suit, and the court will hold a surety to the general intent of the contract into which he has entered.³⁴ Thus the substitution of the real party in interest for a nominal party who was the original libellant, or the substitution of a new owner as claimant does not release the surety on the original stipulation,³⁵ and an amendment of the libel, allowed by the court, does not change his liability.³⁶ Because of the fact that the contract of a surety is made with the court, it seems evident that the court may punish, as a contempt of court, a surety who has justified falsely or recklessly as to his sufficiency, and may fine him in the amount of his stipulation: but the mere failure of a surety to pay the decree in accordance with his stipulation so to do, is not punishable as a contempt.³⁷ Sureties are regarded as parties to the cause, and are bound by orders made therein to the same extent as is the claimant.³⁸ Their liability cannot exceed the amount named in the stipulation, except in case of their default or contumacy.³⁹

§ 434. Rights of Sureties.

Sureties who pay a judgment against their principal are in general subrogated to the rights of such principal.⁴⁰ But where there is an insufficient fund in court, sureties who have paid a decree do not

³¹ Dist. Rule 17; *The Emma B.*, 140 F. R. 770.

³² Dist. Rule 18.

³³ *The Oregon*, 158 U. S. 186.

³⁴ *Newell v. Norton*, 3 Wall. 257; *Boden v. Demwolf*, 56 F. R. 846; *The Cerea*, 149 F. R. 924. See *ante*, § 420.

³⁵ *The Beaconsfield*, 158 U. S. 303; *The Cerea*, 149 F. R. 924.

³⁶ *Fairgrieve v. Marine Ins. Co.*, 112 F. R. 364.

³⁷ *The Blanche Page*, 16 Blatch. 1. See *post*, § 498.

³⁸ *The Beaconsfield*, 158 U. S. 303.

³⁹ *The Wanata*, 95 U. S. 600; *Munks v. Jackson*, 66 F. R. 571; *Brown v. Burrows*, 2 Blatch. 340.

⁴⁰ *The Madgie*, 31 F. R. 926.

stand in a position of equality with parties who have maritime liens against the fund.⁴¹ The marshal's sale of a vessel extinguishes all liens, and hence a surety who pays a claim after the sale of a vessel cannot be subrogated to the position of the original lien holder.⁴²

§ 435. Bond to the Marshal.

Section 941 of the Revised Statutes provides for another form of security which may be given on arrest of person or property, namely, a bond to the marshal. This security is in the form of a penal bond to the marshal, in double the amount of the libellant's claim, conditioned that the respondent or claimant will abide by all orders of court, interlocutory or final, and will pay the money awarded by the final decree of the district court or of an appellate court. It is executed by the principal party and by two sureties, (unless the libellant will consent to one surety or a surety company), and is delivered to the marshal, who files it with the clerk. The statute apparently makes the marshal the sole arbiter of the form and sufficiency of the bond, but, as matter of practice, the marshal will not receive the bond or release the property, unless the bond is approved by the libellant's proctor or by the court, and the general practice of giving such a bond is similar to the giving of a stipulation. As it has to be given in double the amount of the libellant's claim, whereas a stipulation, other than a stipulation for value, is given for only sufficient to cover the libellant's claim, the giving of such a bond is not particularly desirable for the giver, though the giving of it compels the marshal to look for the payment of his fees to the libellant, instead of to the claimant, as is the case when a stipulation is given.⁴³ All bonds in common law form, given on release of property, comes within § 941 of the Revised Statutes, and the sureties thereon are bound to abide by and answer the decree of the court in the cause.⁴⁴ The bond is good only for the particular claim on account of which it is filed, and a subsequent intervenor cannot attack it.⁴⁵ When such a bond is given, judgment may be entered against both principal and surety at the time of the rendition of the judgment.⁴⁶

⁴¹ *Carroll v. The Leathers*, Newberry, 432, Fed. Cas. 2455; *Roberts v. The Huntsville*, 3 Woods 386, Fed. Cas. 11904; *The Madgie*, 31 F. R. 926; *The Willamette Valley*, 76 F. R. 838; see *The Menominie*, 36 F. R. 197; *The Thomas Sherlock*, 22 F. R. 253.

⁴² *The Evangel*, 94 F. R. 680.

⁴³ *The Georgeanna*, 31 F. R. 405.

⁴⁴ *Munks v. Jackson*, 66 F. R. 571.

⁴⁵ *The T. W. Snook*, 51 F. R. 244.

⁴⁶ *The Belgenland*, 108 U. S. 153; *The Columbia*, 109 F. R. 660.

§ 436. Suits in Forma Pauperis.

Formerly a libellant who, by reason of poverty, was unable to give security for costs, or a defendant who for the same reason could not give bail, was entitled to bring suit or defend on giving the *juratory caution*, that is, a personal stipulation, without surety, to prosecute the suit, if plaintiff, and pay costs and expenses, and, if defendant, to appear from time to time, and subject himself to the orders of the court.⁴⁷ The practice has been superseded as to parties libellant by the provisions of the Act of July 20, 1892, ch. 209, 27 Statutes at Large, p. 252, which provide that a plaintiff in certain cases may sue as a poor person and have counsel assigned. The Act applies to all the courts of the United States and supersedes rules of court so far as they vary from the statute.⁴⁸ As it applies only to parties plaintiff, the juratory caution may still be employed in the case of a poor defendant. But such cases are rare; arrests of the person have fallen into disuse, and a poor defendant would naturally have no property to attach. The statute provides that any citizen of the United States,⁴⁹ entitled to commence any suit or action in any court of the United States, may do so without prepaying fees or costs or giving security therefor, upon filing in court a statement in writing, under oath, that, because of his poverty, he is unable to pay the costs of the said suit, or to give security therefor, and that he believes he is entitled to the redress he seeks by such suit, setting forth briefly, also, the nature of his alleged cause of action. Upon filing such statement with the libel, process will issue, but in the Southern District of New York, under Rule 8, only on express allowance of the court, and process *in rem* cannot issue until twenty-four hours after the filing of the libel, and then only upon proof of notice to the defendant of the filing of the libel to give opportunity for appearance. In the case of an infant plaintiff, the statement may be verified by a next friend.⁵⁰ The defendant may deny the truth of the libellant's statement of poverty, and the court is empowered to make a preliminary investigation into the matter, and to dismiss the cause if it appears that the allegation of

⁴⁷ *Polydore v. Prince*, Ware, 410; *Bradford v. Bradford*, 2 Flip. 280; *Thomas v. Thorwegan*, 27 F. R. 400; *The Phoenix*, 36 F. R. 272.

⁴⁸ *Donovan v. Salem & P. Nav. Co.*, 134 F. R. 316.

⁴⁹ The statement required to be filed must show that the libellant is a citizen; *Boyle v. Great Northern R. Co.*, 63 F. R. 539. Cases of an alien desiring to sue in *forma pauperis* would not fall under this Act, but would be special cases, requiring special application to the court, and special allowance by the court of the suit in the desired form.

⁵⁰ *McDuffie v. Boston & M. R. Co.*, 82 F. R. 865.

poverty is untrue or that the alleged cause of action is frivolous or malicious.⁵¹ The provisions of the Act cover costs and expenses on appeals,⁵² but if a libellant so sues, and afterwards takes an appeal and gives security on appeal, an affirmance will carry costs of both courts against him,⁵³ and a libellant, though a pauper, may not appeal without giving bond.⁵⁴ The costs of officers of court are to be paid by the libellant out of any recovery which he may obtain,⁵⁵ and are payable by defendant if the latter settles the case out of court with a libellant who has sued *in forma pauperis*.⁵⁶

⁵¹ 27 St. at L. p. 252, sec. 4; *Whelan v. Man. R. Co.*, 86 F. R. 219; *The Our Friend*, 131 F. R. 395. Where libellants proctor has taken the case on a contingent fee, libellant is not entitled to sue as a poor person; *Boyle v. Great Northern R. Co.*, 63 F. R. 539.

⁵² *Columb v. Webster M. Co.*, 76 F. R. 198.

⁵³ *The Joseph B. Thomas*, 158 F. R. 559.

⁵⁴ *The Presto*, 93 F. R. 522.

⁵⁵ *Davis v. Adams*, 109 F. R. 271.

⁵⁶ *Erratt v. Humphreys*, 102 F. R. 925.

CHAPTER XXVIII.

EVIDENCE.

§ 437. Court Not Bound by State Court Rules.

The laws of the state in which the court is held furnish the rules of decision as to the competency of witnesses;¹ and all objections to evidence on the ground of competency must be made at the hearing.²

But courts of admiralty are not bound by all the rules of evidence which are applied in courts of common law and they may, where justice requires it, take notice of matters not strictly proved, and may receive in evidence testimony which might not be admissible in other courts.³

§ 438. Judicial Notice of Foreign Law.

In considering the law of the sea, an admiralty court may take judicial notice of and follow customs and usages of other maritime nations,⁴ and even foreign statutes which have been accepted as obligatory by the principal commercial states of the world.⁵

¹ Rev. Stat. § 858.

² Ryan v. Bindley, 68 U. S. (1 Wall.) 66; Nelson v. Woodruff, 66 U. S. (1 Black.) 156; The Trial, Blatchf. & H. 94.

³ The Peerless, Lush, 30; The J. F. Spencer, 3 Ben. 337; The Boskenna Bay, 22 F. R. 662. Ship's papers admissible in evidence; Grace v. Brown, 86 F. R. 155; Bacon v. Conroy, 172 F. R. 532. Certificate of notary proves protest; The Gallego, 30 F. R. 271. Records of the French Consulate, to prove statements of the master of a French vessel; The Lisbonense 53 F. R. 293. Statements as to a collision, made by the master of the vessel, are admissible as admissions in suit against the owner; The Potomac, 8 Wall. 590; Packet Co. v. Clough, 20 Wall. 528; The Enterprise, 2 Curtis, 317; The Severn, 113 F. R. 578. Where reliance is placed on a foreign law, it must be alleged and proved; The Matterhorn, 128 F. R. 863. The defence of contributory negligence on the part of the libellant, when relied on, must be proved by a preponderance of evidence; The Nellie, 130 F. R. 213. Though the court does not take notice of the Inspectors Rules unless offered in evidence (The E. A. Packer, 140 U. S. 360; The Clara, 55 F. R. 1021; The H. B. Rawson, 162 F. R. 312), it may consider such rules when referred to in the record and considered in the briefs; The H. B. Rawson, 162 F. R. 312.

⁴ The Scotia, 14 Wall. 170; The Paquete Habana, 175 U. S. 677.

⁵ The Scotia, 14 Wall. 170; The Belgenland, 114 U. S. 355; Richelieu, etc., Nav. Co. v. Boston Marine Ins. Co., 136 U. S. 408; The New York, 175 U. S. 187.

§ 439. Pleadings.

The chancery rule that, if the answer be not contradicted by two witnesses, or circumstances and one witness, it must be taken as true in all matters responsive to the libel, is not the rule in admiralty. The answer to the libel has no more force as evidence than the libel itself has. The pleadings are not evidence, in the common sense of the word. Being, however, the solemn statement of facts by the parties, under the solemnity of an oath, the court is bound to examine them carefully, and it is impossible that they should not influence the mind of the court; in many cases of nicely-balanced proofs, the influence of the pleadings may well turn the scale.⁶

§ 440. Answers to Interrogatories. I.

The power to interrogate the parties furnishes an effectual means of bringing the party before the court with great advantage, and in abridging the more expensive *viva voce* proof on trial. The libellant may interrogate the defendant, in writing, as to any matters alleged in the libel, which may be necessary to support the action,⁷ and similarly, the defendant may interrogate the libellant as to matters charged in the libel, or matters of defence set up in the answer.⁸ The interrogatories are confined to the allegations of the pleadings, and inspection or production of documents cannot be had by means of interrogatories,⁹ nor can they be used as a means for prying unduly into an adversary's case,¹⁰ or discovering assets.¹¹ The party interrogated is bound to answer, in writing, each interrogatory, unless his answer will expose him to prosecution or punishment for a crime, or to a penalty, or forfeiture of his property for a penal offence.¹²

§ 441. Answers to Interrogatories. II.

It is doubtful whether the answers to interrogatories are to be regarded strictly as evidence, or as a compulsory amplification of the pleading on the specific subjects propounded in the interrogatories.

⁶ *Hutson v. Jordan, Ware*, 393; *Cushman v. Ryan*, 1 Story, 91; *ante*, §§ 434, 439.

⁷ Ad. Rule 23.

⁸ Ad. Rule 32. See *The Baker Palmer*, 172 F. R. 154.

⁹ *Havemeyer, etc., Sugar Ref. Co. v. Compania, etc.*, 43 F. R. 90.

¹⁰ *Bock v. Int. Nav. Co.*, 124 F. R. 711; *Dana v. Cosmopolitan S. Co.*, 131 F. R. 158.

¹¹ *In re Knickerbocker Steamboat Co.*, 136 F. R. 956.

¹² Ad. Rules 31, 32. The objection to answering upon that ground should be taken by the party and not by his counsel; *In re Knickerbocker S. S. Co.*, 136 F. R. 956.

the opposite party to reach the place of taking the deposition at the time set, or to instruct a local attorney at that place. The reasonableness of the notice is a relative question in each case, depending upon distance, and facility of communication to enable a party to appear or obtain proper representation.²² The notice should be entitled in the cause, or with reasonable certainty describe the cause. It must be from the party proposing to take the deposition to the opposite party or his attorney of record, "as either may be nearest." This means nearest to the place where the witness is to be examined,²³ so that to examine a witness outside of the district where the cause is pending notice might have to be given to the party personally.

Under the provision of the statute that, if "reasonable" notice cannot be given, and there is urgent necessity for taking the deposition, the notice shall be such as a judge authorized to hold court in such circuit or district shall "think reasonable, and direct," it is necessary for the party who is taking the deposition, if he has any doubt as to the proper notice, to apply to a Circuit or District Judge of the district where the deposition is to be taken and obtain his direction as to the terms of the notice.

Any person may be compelled to appear and depose, in the same manner as to appear and testify in court. This is by the usual subpoena, served in the usual manner, and if the witness refuse or neglect to appear, the magistrate may, on due proof of service of the subpoena, bring him before him, by attachment. Such a subpoena may be served upon a witness living without the district, provided he do not live more than one hundred miles from the place of holding court.²⁴ If the witness is to be examined before a commissioner or notary public, the subpoena must be issued from the court.²⁵

§ 446. Depositions. V—Examining the Witness—Magistrate's Certificate—Return.

At the taking of the deposition, the witness must be cautioned and

²² American, etc., Bank v. First Nat. Bank, 82 F. R. 961.

²³ The fact that the notice must be given to the person nearest to the *place of taking* the deposition and not nearest to the place where the cause is pending, is shown by the early statute relating to such depositions (1 St. p. 88) where it is provided that a notification *from the magistrate*, before whom the deposition is to be taken, be first made out and served on the adverse party or his attorney "as either may be nearest," i. e., nearest, of course, to the magistrate.

²⁴ Rev. Stat. §§ 863, 876.

²⁵ U. S. v. Tilden, 10 Ben. 566, 576.

sworn or affirmed to testify the whole truth. The deposition should have a proper title, showing the cause, and the official description of the officer. The witness may be examined by both parties, or their counsel. The testimony must be reduced to writing or typewriting either by the officer taking the deposition or by some person under his personal supervision, or by the deponent in the magistrate's presence, and by no other person. Under the provision for the reduction of the testimony to typewriting, a stenographer and typewriter, under the personal supervision of the magistrate, may no doubt first take the testimony stenographically, and then write it out on the typewriter. It must be then subscribed by the witness; and the magistrate should put his official jurat to it, with the date, and retain the deposition till he deliver it, with his own hand, into the court for which it is taken, or into the custody of the post-office; and the magistrate should not fail to add his official certificate of the reasons for taking the deposition, viz.: that the witness resides more than one hundred miles from the place of trial, or is about to go to sea, or otherwise, according to the Act. The magistrate should certify the notice given to the adverse party, stating the time given him to appear. It is well to annex a copy of the notice. If the certificate does not state the reasons for taking the deposition, and the notice given to the adverse party, the deficiency cannot be supplied by other proof.²⁶ The certificate should also state that the officer was not of counsel, or attorney for either party, or interested, and that the deposition was reduced to writing by the witness or the officer, or by some person under the latter's supervision, and was signed by the witness. If these documents be on separate pieces of paper, they should be properly fastened together, and referred to with reasonable certainty. They must then be sealed up by the magistrate, directed to the court in which the cause is pending,²⁷ indorsed with the title of the cause, and marked "depositions." They may be forwarded by mail or by private hand, and must remain under the magistrate's seal until opened in court, or by order.

As soon as they are received by the clerk, he marks their receipt and presents them to the judge in court, who opens them, and the clerk enters the fact in the minutes of the court, and files the deposi-

²⁶ *Harris v. Wall*, 48 U. S. (7 How.) 693; *Cook v. Burnly*, 11 Wall. 659; *Shutte v. Thompson*, 15 Wall. 151; *Pettibone v. Derringer*, 4 Wash. 215.

²⁷ *Bell v. Morrison*, 26 U. S. (1 Pet.) 351; *The Patapsco Ins. Co. v. Southgate*, 31 U. S. (5 Pet.) 604; *Beale v. Thompson*, 12 U. S. (8 Cranch), 70.

tions, and notifies the proctor of the party on whose behalf they are taken. Or the clerk may let them remain under seal, and notify the parties of their receipt, and either party on notice to the other, may obtain an order that the seals be broken and the depositions be filed. A deposition opened out of court without the consent of the other party is inadmissible.²⁸

§ 447. Depositions. VI—Notice of Filing Depositions.

By a general rule of the District Court for the Southern and Eastern Districts of New York, notice must be given to the proctor of the opposite party of the filing of the depositions; and all objections to the form or manner in which they were taken or returned, are deemed waived unless such objections shall be specified in writing, and filed within four days after the same are opened, unless further time be granted by the judge.²⁹ Objections taken thus early will sometimes enable the party to remove them, or to retake the depositions before the trial.

§ 448. Depositions. VII—Proof of Regularity of Proceedings.

The depositions themselves, sworn to and certified in form according to the act, will be *prima facie* evidence of the official character of the magistrate, and of the truth of his certificate, and of the regularity of the proceedings to take them, so far as they are certified to; but the opposite party will be always at liberty, before the depositions are read in evidence, to disprove any or all the facts necessary to establish their validity, and no necessary fact will be presumed, concerning which the certificate and depositions are silent.³⁰

If the party, against whom the depositions are taken, is present at the examination, it is his duty to make all the objections to the examination which are known to him at the time.³¹

§ 449. Depositions. VIII—Motion to Suppress.

If a party deem that a deposition has been irregularly taken, it is inadvisable for him to wait, before taking objections thereto, until the same is offered in evidence on the hearing, but the objections should take the form of a prompt motion to suppress the deposition. It has

²⁸ Beale v. Thompson, 8 Cranch 70; The Roscius, Brown Ad. 442.

²⁹ D. C. Rule 50.

³⁰ Ruggles v. Bucknor, 1 Paine. 358; Bell v. Morrison, 26 U. S. (1 Pet.) 351; The Patapsco Ins. Co. v. Southgate, 30 U. S. (5 Pet.) 604, 617; The Argo, 15 U. S. (2 Wheat.) 287; The U. S. v. Clark, 1 Gal. 501; Evans v. Hettick, 3 Wash. 408; Allen v. Blunt, 2 Wood. & M. 121.

³¹ The U. S. v. One Case of Hair Pencils, 1 Paine, 400.

been definitely held that such a motion must be made before trial, so as to afford the other party an opportunity to retake the deposition or correct defects in the taking of it,³² and that lack of promptness in making the motion will deprive the party of his right to suppress the deposition.³³ But if the party has had no notice of the irregularities of the deposition before the same is offered in evidence in court, there can be no doubt that an objection to its introduction taken then, is sufficient.

§ 450. Depositions. IX—Necessary Proof for Admission of Depositions.

To authorize the party to read in evidence a deposition taken *de bene esse*, under the acts of Congress, he must show that the witness is then dead, or gone out of the United States, or to a greater distance than one hundred miles from the place where the court is sitting, or that by reason of age, sickness, bodily infirmity or imprisonment, he is unable to travel and appear at court.³⁴

§ 451. Taking Down Evidence in Court.

There was formerly a statutory provision for the taking down of oral testimony in court by the clerk³⁵ if either party moved that it be so taken. But on the adoption of the Revised Statutes this provision seems to have been omitted. The practice is that the evidence is taken down by a stenographer, the judge taking more or less full notes also. And in case of an appeal, the evidence is transcribed from such notes. The District Court has power to order the testimony to be taken by a stenographer even if a party refuses to consent thereto,³⁶ and it is always so taken, unless in unimportant cases. The appellate courts insist on a record made up of evidence taken in full.³⁷

§ 452. Commission to take Testimony, or Dedimus Potestatem. I.

By § 866 of the Revised Statutes, every court of the United States is clothed with the power to grant a *dedimus potestatem*, or commission to take depositions abroad, according to the common usage,³⁸ when

³² Howard v. Stilwell et al. 139 U. S. 199; Bibb v. Allen, 149 U. S. 481.

³³ Bird v. Halsey, 87 F. R. 671.

³⁴ Rev. Stat. § 865; Harris v. Wall. 48 U. S. (7 How.) 693; Sergeant v. Biddle, 17 U. S. (4 Wheat.) 508.

³⁵ 1 Stats. at Large, p. 89.

³⁶ Rogers v. Brown, 136 F. R. 813.

³⁷ Neilsen v. Coal, etc., Co., 122 F. R. 617.

³⁸ The expression "according to common usage" does not necessarily mean according to the practice of the State whence the commission is issued, if the

it may be necessary to prevent a failure or delay of justice. This remedial provision with its beneficial purpose fully and distinctly set forth, cannot be construed otherwise than to give the courts the fullest power, in every manner usual in courts of justice, to depute their own power to take testimony in a cause, where the ends of justice will be promoted by doing so. A commission to take testimony in an enemy's country, in prize cases, is not issued.³⁹

The circumstances under which and the mode in which the application should be made to the court may be regulated by standing rules of the court, or left to the discretion of the court in each particular case. In the Southern District of New York, it is regulated by standing rules 47 to 50.

§ 453. Commission to Take Testimony. II.

Regularly, a motion for the issuing of a commission must be made within fourteen days after the answer is filed or perfected, or within fourteen days after interrogatories have been properly answered, if interrogatories have been propounded by the libellant. But, on cause shown, an application for a commission and for a stay pending its execution, may be made at any time before final decree.⁴⁰ The motion for a commission should be founded on an affidavit, which must state the facts expected to be proved, the names of the witnesses, and the shortest time within which the party believes the commission can be executed and returned.⁴¹ If the names of the witnesses are not known, or for other special cause, a commission may be issued to examine witnesses not named.⁴² When the order for the commission is granted, the moving party should prepare interrogatories and serve them on his adversary, who within four days must serve cross-interrogatories, and, if either party objects to the opposite interrogatories, they may be settled by the court on one day's notice. If no notice of settlement is given within five days after the service of the cross-interrogatories, both parties will be deemed to have assented to the interrogatories as served. The interrogatories and cross-interrogatories may be allowed provisionally subject to objection at the trial.⁴³ The moving party

admiralty court has established rules of its own as to the execution of commissions; *The Westminster*, 96 F. R. 766.

³⁹ *The Diana*, 2 Gal. 93; 4 Stat. at Large, 197, note; *Nelson v. The U. S.*, 1 Pet. C. C. R. 235; *Hall's Ad.* 37.

⁴⁰ Dist. Rule 47.

⁴¹ Dist. Rule 47.

⁴² Dist. Rule 47.

⁴³ Dist. Rule 49.

thereupon delivers to the clerk of the court a certified copy of the order for the commission, together with the interrogatories and cross-interrogatories as agreed to or settled, and the clerk annexes them to the formal commission and forwards the whole to the foreign consul or magistrate selected or ordered. On the return of the commission to the clerk, notice of filing is given and objections may be taken as in the case of depositions *de bene esse*.⁴⁴ Ante § 447.

If, on service of a notice of motion for a commission with its accompanying affidavits, the other party admits in writing that the witnesses will depose to the facts stated in the affidavits, a commission will not be allowed to stay proceedings, and the affidavits and the admission may be read on the trial or hearing and will have the same effect as a deposition to those facts by the witness or witnesses named.⁴⁵

§ 454. Commission to take Testimony. III.

Commissioners under a commission to take testimony act under a special authority derived from the court, which must be strictly pursued, and cannot be exercised by any one but the commissioners or commissioner named in the writ.

In executing a commission, all the interrogatories, direct and cross, must be put to the witnesses, and substantially answered. Within the United States and its territories, witnesses may be compelled to appear before the commissioners, and produce books and papers, and testify pursuant to §§ 868, 869 and 870 of the Revised Statutes. The depositions are not in any sense *de bene esse*, and none of the peculiar requisites in case of depositions *de bene esse* are material.⁴⁶

§ 455. Depositions in Perpetuam Rei Memoriam.

In addition to the methods for taking testimony referred to already, section 866 of the Revised Statutes provides that "any circuit court,

⁴⁴ Dist. Rule 50.

⁴⁵ Dist. Rule 48.

⁴⁶ 4 Stat. at L. 197; *Vantophorst v. State of Maryland*, 2 U. S. (2 Dall.) 401; *Yeaton v. Fry*, 9 U. S. (5 Cranch), 335; *Cunningham v. Otis*, 1 Gal. 166; *The Diana*, 2 Gal. 93; *Keltand v. Bissett*, 1 Wash. 144; *Winthrop v. Union Ins. Co.*, 2 Wash. 7; *LeRoy v. Delaware Ins. Co.*, 2 Wash. 223; *The Argo*, 15 U. S. (2 Wheat.) 287; *The London Packet*, 15 U. S. (2 Wheat.) 371; *Sergeant v. Biddle*, 17 U. S. (4 Wheat.) 508; *Chirac v. Reinicker*, 27 U. S. (2 Pet.) 613; *Keene v. Meade*, 28 U. S. (3 Pet.) 1; *Richardson v. Golden*, 3 Wash. 109; *Lonsdale v. Brown*, 3 Wash. 404; *Lessee of Rhoades v. Selin*, 4 Wash. 715; *Boudereau v. Montgomery*, 4 Wash. 186; *Dodge v. Israel*, 4 Wash. 323; *Gilpin v. Consequa*, 1 Pet. C. C. R. 86; *Nelson v. U. S.* 1 Pet. C. C. R. 235; *Willings v. Consequa*, 1 Pet. C. C. R. 301.

upon application to it as a court of equity, may, according to the usages of chancery, direct depositions to be taken *in perpetuam rei memoriam*, if they relate to any matters that may be cognizable in any court of the United States." This provision is applicable to a case where no action or suit has been begun, but one is expected or feared, and a party has evidence at hand which he may not be able to obtain later, when suit is actually begun. The depositions must be taken in the Circuit Court, on the equity side, and according to the usages of chancery.⁴⁷ The chancery practice is to file a bill to perpetuate testimony and issue process in the usual manner to the persons interested, who may appear and show cause why the testimony should not be perpetuated.⁴⁸ In practice in the admiralty, the method of perpetuating testimony is to draw a petition setting forth fully the facts, the apprehended liability, the nature of the evidence at hand and the reasons why it is probable that it will not continue to be available. This petition should be presented to the Circuit Court and an order obtained to show cause why the desired testimony should not be taken. This order and petition should be served upon every person who would have any interest in the anticipated controversy, and who may thereupon answer the petition and show cause why the depositions should not be taken. If the taking of the testimony is allowed the court will by its order direct the method. The depositions, when taken, remain with the Circuit Court until called for by a court in which the controversy has actually been begun, and are thereupon transmitted to such court.

Section 867 of the Revised Statutes provides that any court of the United States may, in its discretion, admit in evidence in any cause before it any deposition taken *in perpetuam rei memoriam*, which would be so admissible in a court of the state wherein such cause is pending, according to the laws thereof.⁴⁹

§ 456. Letters Rogatory, or Commission sub mutuae vicissitudinis.

By the law of nations, the courts of justice of different countries are bound to mutually aid and assist each other for the furtherance of justice. Hence, when the testimony of witnesses who reside abroad is necessary in a cause, the court or tribunal where the action is pending may send to the court or tribunal within whose jurisdiction

⁴⁷ See *Green v. Compagnia Generale*, 82 F. R. 490.

⁴⁸ See *Foster*, Fed. Prac. § 279.

⁴⁹ See *Ohio Copper Mining Co. v. Hutchings*, 172 F. R. 201.

the witnesses reside, a writ patent or close, as it may think proper. They are usually called *letters rogatory*, but are sometimes denominated *sub mutuæ vicissitudinis*, from a clause which they generally contain. By that instrument, the court abroad is informed that a certain claim is pending, in which the testimony of certain witnesses, who reside within its jurisdiction, is required, and it is requested to take their depositions, or cause them to be taken, in due course and form of law, for the furtherance of justice and *sub mutuæ vicissitudinis obtentu*; that is, with an offer on the part of the court making the request to do the like for the other in a similar case. If these letters rogatory are received by an inferior judge, he proceeds to call the witnesses before him, by the process commonly employed within his jurisdiction, and examine them on interrogatories or take their depositions, as the case may be, and the proceedings being filed in the registry of his court, authentic copies thereof, duly certified, are transmitted to the court *a quo*, and are legal evidence in the cause. If the letters are directed to a court of superior jurisdiction, they appoint an examiner or commissioners for the purpose of executing them, and the proceedings are filed and returned in the same manner.⁵⁰

⁵⁰ Rev. Stat, §§ 875, 4071; *Nelson v. U. S.*, 1 Pet. C. C. 235, in which case will be found a form of letters rogatory. See also Appendix, pp. 648, 651.

CHAPTER XXIX.

HEARING, OR TRIAL.

§ 457. Either Party may bring on Trial.

The cause, being ready for hearing, is noticed for trial, according to the rules established in the district where it is to be heard. The circumstances of the different districts vary so widely that no general rule could well be adopted for all. In the Southern District of New York four days' notice of trial on the proctor for the opposite party is required: in the Eastern District, eight days notice of trial by one proctor to the other is necessary.¹

The libellant, and the claimant or respondent, are both actors, and either party may notice the cause, and bring on the hearing.²

§ 458. Defendant must have Appeared and Contested.

It has already been stated that the defendant cannot be heard in his defence, nor introduce evidence in the cause, unless he have appeared in the cause and contested the suit, either by exceptions to the libel, or by answering. If he does neither, the court will hear and adjudge the cause *ex parte*, upon the evidence offered by the libellant. If the neglect to answer, however, has been from ignorance or other sufficient cause, the court is not precluded from receiving evidence, and may exercise its discretion for the purposes of justice.³

§ 459. Failure to appear on Trial.

At the trial, if either party be not in attendance, his adversary may take such decree as he would be entitled to if his pleading were confessed. If any postponement be desired by either party, on sufficient

¹ See *post*, § 512; Dist. Ct. Calendar Rules B. and H. (S. D. & E. D. of N. Y.)

² *Jennings v. Carson*, 8 U. S. (4 Cranch), 2. In the Southern District of New York, it has been held that the practice of the court does not authorize the dismissal of a libel for the libellant's delay in bringing the cause to a hearing after issue joined; *The Mariel*, 6 F. R. 831. The practice still exists, though the rules cited in the above case have been abrogated.

³ *The David Pratt, Ware*, 509, *McKinlay v. Morrish*, 62 U. S. (21 How.) 343.

reason, it is granted by the judge. The whole matter being in his discretion, he may postpone for a longer or shorter period, absolutely, or on such terms and conditions as justice may demand. The nature of maritime transactions is such, that witnesses are often transient, and their convenience, as well as the necessities of the parties, often exercises an important influence in determining the mind of the court in matters relating to the mere conduct of the hearing. The court sometimes commences the hearing by taking the testimony of transient witnesses on either or both sides, without regard to the usual order of proceeding, and then postpones the cause for a longer or shorter time, as may be necessary to take the other testimony and complete the hearing. Sometimes the testimony is all taken, and the cause is postponed till a future day, to hear the arguments of counsel. Sometimes postponement is ordered only on condition that the party asking it shall consent to take the depositions of witnesses in writing, out of court, or to admit what is expected to be proved by them. Not infrequently, the evidence has all been taken out of court in advance, and the trial in open court consists of nothing but the argument of the advocates and the submission of the case for decision.

§ 460. Flexibility of Proceedings.

It is this flexibility of a Court of Admiralty, its power to adapt itself to the circumstances of the parties and their witnesses, without prejudice, and often with signal advantage to the cause of justice, that constitutes one of its great points of superiority over the courts of common law and over trials by jury.

The full and proper presentment of the facts, the careful consideration and arrangement of them in argument, the due deliberation and reflection upon the facts and the law, which are the usual characteristics of proceedings in an admiralty court, are often impossible in tribunals, of which a necessary part is a jury, drawn by hazard from the community at large, taken forcibly from their private affairs and without the practised powers of analysis, of memory and of judgment, which alone could enable them to detect fallacies, to unravel the tangled web of deceit, and resist the persuasions of eloquence, especially when compelled to a hurried unanimity in cases where the wisest are compelled to doubt.

§ 461. Practice at Hearing.

An admiralty cause is to be decided according to the allegations and proofs, *secundum allegata et probata*, and the proofs must

correspond to the allegations.⁴ The allegations are to be found in the pleadings. On the hearing, therefore, the first thing to which the attention of the court is called is the pleadings. The advocate for the libellant opens by a very brief and general statement of the nature of his case, and reads the libel; the advocate for the defendant reads the answer, and, if there be other pleadings, each party reads his own. The more circumstantial and careful opening, which the inexperience of jurors renders necessary in trials at common law, is out of place in an admiralty court. The pleadings being read, the proofs are introduced in the same general order which must prevail in all lawsuits, but with less strict adherence to the artificial rules, which are sometimes made to constrain the parties in jury trials. The judge always exercises his discretion as to the order of calling and re-calling witnesses, and the course of examination.⁵ A motion to dismiss at the close of libellant's case is ordinarily not entertained unless claimant also rests.⁶ Inasmuch as an appellate court hears the whole cause *de novo*, and does not send back the cause for a new trial, it is desirable, for the benefit of the higher court, that evidence which is objected to should be received, subject to the objection, unless it is utterly irrelevant, and it should not be excluded entirely.⁷ And the court has power to order the evidence to be taken stenographically, against the objection of one of the parties, and to tax the stenographer's fees as part of the costs.⁸

§ 462. Examination of Parties.

Since the passage of the Act of Congress of July 2, 1864, the clause of which relating to this subject is now embodied in § 858 of the Revised Statutes, the parties to actions in courts of the United States are no longer excluded as witnesses. The practice in the admiralty, before that statute, allowed parties to testify in their own behalf in many cases where the strict rule of the common law excluded them. Thus, when the proofs of a party were imperfect, yet

⁴ *The Boston*, 1 Sumn. 323; *The Gazelle*, 128 U. S. 474. But where there has been a failure of proof on the cause of action alleged, but the evidence has disclosed another cause of action, the court will sometimes allow recovery on that, rather than compel the parties to commence anew; *The Rapid Transit*, 52 F. R. 320.

⁵ *The Phil. & T. R. R. Co. v. Stimpson*, 39 U. S. (14 Pet.) 448.

⁶ *The Persiana*, 158 F. R. 912. See the danger of a successful motion to dismiss set forth in *Bull v. N. Y. & Porto Rico S. S. Co.*, 167 F. R. 792.

⁷ *Minnesota S. S. Co. v. Lehigh V. T. Co.*, 129 F. R. 22.

⁸ *Rogers v. Brown*, 136 F. R. 813.

went far to establish his case, he might offer his own oath in corroboration of the other proofs. This practice was derived from the necessity, under the civil law, of having more than one witness. Full proof of a fact could not be made by one witness, and in many cases, manifest injustice would be the necessary result of the absence of any second witness. In such cases the party was allowed to complete his proof by his own oath, which was called the *suppletory oath*. This oath might be prayed and was granted in all maritime causes.⁹

By the suppletory oath the party himself testified "that, of his own certain knowledge, the facts stated in his allegation (to which he offers his oath), are true." There was also the *oath decisory*, which either party might tender to the other, that is, offering further decision of the cause upon the oath of his adversary. The adversary was bound either to accept the offer, or make a similar proposition in return. This was a mode of proof known to the civil law, and is said to have been practiced in admiralty. Such methods of proof are of interest only historically, for now in admiralty as at the common law, the fullest liberty is given a party to testify in his own behalf.

§ 463. Argument of the Cause.

The testimony being concluded, the cause is argued at that time or at a future day. In the Southern and Eastern Districts of New York, the practice in argument varies from that of the common law courts in that the advocate for the libellant usually first states the principal points of fact and of law upon which he relies, with his legal authorities. The advocate for the defendant then argues the case to the court, and the advocate for the libellant closes the discussion, and the cause is fully submitted to the judge for his decision, which may be given on the spot, or be pronounced after examination and deliberation.

It is customary for the advocates to submit to the court written points of fact and of law, with reference to the testimony, and the authorities.

§ 464. Opening Case for Further Proofs.

Allusion has already been made to the power of the court to vary, interrupt, or postpone proceedings when the cause of justice may require it. So, after the hearing of the case is concluded, on proper

⁹ Hall's Ad. 93; The David Pratt, Ware, 509; Dunlap's Prac. 284-8; Greenleaf's Ev. 294.

cause shown, the court will withhold the conclusion of the cause for the purpose of hearing further proofs. This is sometimes done at the suggestion or request of the judge himself, if, in his examination of the case, he finds that by the surprise of the party, or by his own exclusion of testimony, the case is so imperfectly before him that injustice may be done; and it is sometimes ordered on the application of the party, when there is newly discovered evidence, or when it is necessary to enable him to supply omissions.¹⁰ But the Court will not reopen a case to allow a party to introduce evidence which was always attainable by him.¹¹

¹⁰ *Cargill v. Spence*, 2 Hag. Ecc. Sup. 146; *Le Niemen*, 1 Dod. 10; *Waller & Smyth v. Heseltine*, 1 Phil. 173; *The Fortitudo*, 2 Dod. 70; *James v. Cohen*, 3 Curteis, 786; *Smith v. Blake*, 1 Hag. Ecc. 88; *The Elizabeth*, 2 Act. 57, 58 a; *The Vrouw*, 1 C. Rob. 168; *The Harmony*, 2 Dod. 78; *The Francis Wright*, 7 Ben. 88; *Devine v. The Tiverton*, 35 F. R. 529.

¹¹ *The Persiana*, 158 F. R. 912.

CHAPTER XXX.

REFERENCE AND DECREE.

§ 465. The Decree.

The cause being heard and submitted to the court for decision, the court pronounces its decree according to the facts and the law, in favor of the libellants, or the defendants, or some of the libellants and some of the defendants, and against the others, with or without costs, distributively, for or against any or all the parties, as justice may require. The flexibility of the admiralty proceedings in this respect, greatly conduces to the cause of justice.

§ 466. Interlocutory or Final.

The decree made upon the hearing may be interlocutory or final. It is final when it disposes of the whole controversy, and leaves nothing further for the court to do in the cause, as when the libel is dismissed with costs or without costs, or there is a decree for a sum certain, with or without costs. But when by the decree something still remains to be done by the court, before all the rights of the parties in the premises are fixed and the recovering party has an order for execution, then the decree is interlocutory, however much it may dispose of the merits of the cause.¹

§ 467. Reference to Compute Damages.

When the decree is against the libellant, whether the suit be *in personam* or *in rem*, the usual form of the decree is that the libel be dismissed with costs or without costs.

¹ The *Palmyra*, 10 Wheat. 501; *Chace v. Vasquez*, 11 Wheat. 429; *Mordecai v. Lindsay*, 19 How. 199; *Craighead v. Wilson*, 18 How. 199; *Bostwick v. Brinkerhoff*, 106 U. S. 3; *Wabash v. Beers*, 1 Black 54; *Keystone v. Martin*, 132 U. S. 91; *McGourkey v. Toledo, etc., R. Co.*, 146 U. S. 536; *Guaranty Co. v. Mechanics, etc., Co.*, 173 U. S. 582; *Bowker v. U. S.*, 186 U. S. 135; *Bank v. Shedd*, 121 U. S. 74; *Hill v. Chicago, etc., R. Co.*, 140 U. S. 52; *Winthrop v. Merker*, 109 U. S. 180; *Bank v. Sheffry*, 140 U. S. 445; *Macfarland v. Brown*, 187 U. S. 239; *La Bourgogne*, 210 U. S. 95; *The Chief*, 142 F. R. 349; *Carroll v. Davidson*, 152 F. R. 424; *Maas v. Lonstorf*, 166 F. R. 41; *The Eugene*, 87 F. R. 1001; *Hoffman v. Knox*, 50 F. R. 484; *The Delaware*, 33 F. R. 589; *The Thomas Melville*, 34 F. R. 350; *The Elmira*, 16 F. R. 133. *Post*, § 568.

by any proctor to the proctors for the other parties appearing. Any party may except thereto within four days after receipt of the notice of filing.¹⁰ If no exceptions are filed and served within four days after service of notice of such order or within such further time as may be allowed by the court, the report will be deemed confirmed, and a final decree on the report may be entered.¹¹ If alleged errors in a commissioner's report are not clearly excepted to so as to bring them fairly before the District Court, they will not be considered on appeal.¹²

When there are exceptions, the party excepting files and serves his exceptions and the exceptions are heard on a motion day on two days' notice. The court overrules or allows the exceptions, and may send the matter back to the commissioner for further report. When the exact amount of the damages has been ascertained, the costs are taxed and the damages and costs are inserted in the final decree, which is then signed by the court and entered.

§ 470. Proceeding on Final Decree.

If the suit be *in personam*, and the decree be for the libellant for a sum certain, the usual form of the decree is that the libellant recover against the defendant and his stipulators the amount fixed, with costs as taxed, and that he have execution therefor. Such decree is a lien upon the debtor's real estate, in all cases where a judgment of a state court would be; standing, in this respect, upon the same footing as a decree in equity.¹³ In cases *in rem*, it is usual to enter a decree, confirming the commissioner's report, and, if the property be still in custody, decreeing its condemnation and sale and ordering that the proceeds be brought into court; or, if the property have been delivered on stipulation, ordering that the stipulators cause the engagement of their stipulation to be fulfilled within a certain time after notice of the decree, or that they show cause why a summary judgment should not be entered against them on their stipulation and execution issue thereon. See Summary Judgment against Stipulators, *post*, § 498.

§ 471. Decree on Division of Damages. I.

Where suit is brought by a party, *e. g.*, a cargo owner, on a cause of action against two vessels, for damages caused to the party by a colli-

¹⁰ See *Luckenbach v. Del. L. & W. R. Co.*, 168 F. R. 560.

¹¹ Dist. Rules 51, 52.

¹² *The Cayuga*, 59 F. R. 483; *The Eliza Lines*, 114 F. R. 307.

¹³ *Ward v. Chamberlain*, 2 Black, 430; *vide* *Cropsey v. Crandall*, 2 Blatchf. 341.

sion between such vessels, or by any innocent third party on a cause of action involving more than one vessel, and, on the trial, more than one vessel is held in fault, each vessel so held is liable to the innocent third party to the full amount of his damages, at least up to the amount of the stipulation given by each vessel.¹⁴ Each vessel is primarily liable for one-half of the damages, no matter what the values are of the respective vessels, for there are no varying degrees of fault recognized by the court, and damages are not divided proportionably, but always equally.¹⁵ But when one vessel is not able to respond for one-half of the damages, the other must make up the deficiency. The decree, therefore, should provide that each vessel and her stipulators pay one-half of the entire damages, interest and costs, so far as the stipulated value of such vessel shall extend; and it should further provide that any part of the one-half damages assessed against either vessel, which libellant may not be able to collect from that vessel, be assessed against the other vessel, in addition to the one-half which she is in the first instance compelled to pay.¹⁶ After collecting one-half damages from one vessel, proceedings against that vessel will be stayed until execution against the other vessel is returned unsatisfied, when the uncollected balance may be recovered from the first vessel, up to the amount of her stipulation.¹⁷

Where the suits are not brought by a third party against two vessels, but are cross suits by and against the vessels themselves and both vessels are held in fault, each vessel must pay one-half of the other's damages, but separate decrees are not entered against each vessel for one-half of the damage of the other; the damages of both vessels are lumped together, and a single decree entered, in favor of the vessel which has suffered most, for one-half the difference between the respective damages. If vessel A. is damaged to the extent of \$10,000, and vessel B. to the extent of \$1,000, then B. owes A. \$5,000 dollars, and A. owes B. \$500, the result being, in short, that B. owes A. \$4,500. The rule is to subtract the lesser from the greater damage, and enter the decree for one-half the difference, in favor of the vessel which has suffered most, *e. g.*, \$10,000 minus \$1,000 = \$9,000, one-half of which is 4,500.¹⁸

Where more than two vessels are concerned in a collision, and are

¹⁴ *The Atlas*, 93 U. S. 302.

¹⁵ *The North Star*, 106 U. S. 17.

¹⁶ *The Alabama & The Gamecock*, 92 U. S. 695; *The Virginia Ehrman*, 97 U. S. 309; *The City of Hartford*, 97 U. S. 323; *The Sterling*, 106 U. S. 647.

¹⁷ *The Washington & The Gregory*, 9 Wall. 513, and 2 Ben. 226.

¹⁸ *The North Star*, 106 U. S. 17; *The Manitoba*, 122 U. S. 97.

held in fault therefor, each vessel in fault must bear its *pro rata* share of the damages.¹⁹ If two or more of the vessels so held in fault belong to the same owner, the result will be that one owner may have to pay more than another owner, but such result follows from the admiralty rule of regarding the vessel herself, and not her owner, as the offender, and of assessing damages directly against the vessel, without regard to ownership.

§ 472. Decree on Division of Damages. II—Limitation of Liability Acts—The Harter Act.

In the case of *The North Star*,²⁰ the steamship *Ella Warley*, one of the colliding vessels, had been totally lost. And as such total loss freed her owner from liability to third persons, under the limitation of liability rule, the owner claimed that he should pay nothing of the *North Star*'s damage, while recovering from the *North Star* one-half of his own damage. The Supreme Court rejected the contention, and held that a shipowner's claim of limitation of liability cannot be allowed until the balance of liability between the vessels has been struck: hence the amount of the damages to be inserted in a final decree must be ascertained as indicated in the preceding paragraph, whether one of the vessels has been totally lost or not.

The same result is had, notwithstanding the provisions of the Harter Act.²¹ That Act provides that if the shipowner has exercised due diligence to make his ship seaworthy, he shall not be responsible for faults or errors in navigation of the vessel, i. e., he shall not be responsible for a collision as to which his vessel is at fault. Where a collision occurred between a steamer and a sailing vessel, through which the sailing vessel and her cargo were totally lost, and both vessels were found in fault for the collision, the owner of the sailing vessel claimed that since the Harter Act would have protected him against a direct claim for the lost cargo of his own vessel, it would also protect him against the claim of the steamer to recoup one-half of the cargo damages against the one-half damages to be paid by the steamer for the loss of the sailing vessel. The Supreme Court followed the ruling of the *North Star* and other cases, and held that the provisions of the Harter Act would not benefit the owners of the lost vessel until after the balance of damage between her and the other offender had been ascertained.²² This rule of calculating the ultimate liability in such cases is, therefore, not changed by the Harter Act.

¹⁹ *The Eugene F. Moran*, 212 U. S. 466.

²⁰ *The North Star*, 106 U. S. 17.

²¹ Act of Feb. 13, 1903, 27 Stat. p. 445.

²² *The Chattahoochee*, 173 U. S. 540.

§ 473. Decree in Personam after Decree in Rem.

In a suit *in rem*, it is not usual to render a decree *in personam*, but if the case proved shows a clear right to recover *in personam*, the libellant may be permitted, after a decree *in rem*, to introduce the proper allegations *in personam*, and proceed upon them to a further decree against the person.

But this result can only be obtained by an amendment of the pleadings and the decree, and in a collision case, in which the joinder of the ship and her owner is forbidden by the 15th Admiralty Rule, the libellant could have relief only by a new proceeding.²³

When a claimant has signed a stipulation to answer the decree, and the damages amount to more than the stipulation, the libellant may have a decree against the stipulators for the full amount of the stipulation, and a decree against the claimant for the balance of the decree and costs,²⁴ but not if a claimant has not signed the stipulation.²⁵ When the claimant has given a stipulation for the full value of the vessel a decree that he pay more than the amount of the stipulation cannot require him to pay more than the amount of the freight for the voyage, as the limitation of liability statutes would protect him from any liability over and above the value of the vessel and her freight pending.

§ 474. Interest on Damages.

In admiralty, interest on claims arising out of breach of contract is a matter of right, but the allowance of interest on damages in cases of collision or other unliquidated damages is always in the discretion of the court, and may be allowed or disallowed by the District Court,²⁶ or on appeal by the Circuit Court of Appeals or by the Supreme Court.²⁷ One who appeals from a decree in his favor is not entitled to interest pending the appeal, unless it should be held that he was always entitled to more damages than were allowed below.²⁸

§ 475. Correcting Decree.

After the decree is made, it sometimes appears that, by accident, oversight, mistake, or misapprehension, the decree is erroneous. In

²³ *The Zodiac*, 5 F. R. 220.

²⁴ *The Southwark*, 129 F. R. 171.

²⁵ *The Southwark*, 129 F. R. 171.

²⁶ *The Scotland*, 118 U. S. 507; *The Maggie J. Smith*, 123 U. S. 349; *The Albert Dumois*, 177 U. S. 240; *The Eliza Lines*, 132 F. R. 242; *Bethell v. Mellor et al.*, 135 F. R. 445.

²⁷ C. C. A. Rule 30; S. C. Rule 23.

²⁸ *The Rebecca Clyde*, 12 Blatch. 403; *The Blenheim*, 18 F. R. 47; *The Express*, 59 F. R. 476; *The Banes*, 147 F. R. 192.

such cases, the court of admiralty possesses the power of correcting or varying the decree,²⁹ summarily, during the same term,³⁰ and by proceedings under a libel of review, if the term has gone by. Such a variation, however, should be confined to the alteration of an error arising from the defect of knowledge or information upon a particular point in the case, and the error must be brought to the attention of the court with the utmost possible diligence.

²⁹ *The Fortitudo*, 2 Dods. 70; *Snow v. Edwards*, 2 Low. 273. See *ante*, § 340, as to libels of review for correcting decrees after the term at which they were entered has gone by.

³⁰ *Snow v. Edwards*, 2 Low, 273; *Pettit v. One Steel Lighter*, 104 F. R. 1002; *The Annex No. 3*, 38 F. R. 620.

CHAPTER XXXI.

COSTS AND FEES.

§ 476. Costs are Mainly Disbursements.

The heavy charges of the admiralty court relate largely to the custody of property, and to the fact that Congress has not yet seen fit to attach salaried stenographers to the United States Courts, and hence the stenographers' bill for taking down testimony must be borne by the parties. The fees of the marshal, the clerk, the stenographer, the trustee, are all disbursements which have to be made by a party, unless paid out of a fund, but which, in proper cases, are recoverable as costs by the winning party against the loser. Aside from such disbursements, the costs of a suit in admiralty are trivial.

§ 477. The Fee Bill.

The amount of costs in admiralty is governed by the provisions of sections 823 to 829 of the Revised Statutes, the provisions of which are taken from the Federal Fee Bill of 1853.¹ Up to the time of the passage of this Act, the fees of proctors and advocates were fixed by the court, under its general power to regulate the practice, while the fees of the clerk and the marshal were in some cases prescribed by acts of Congress, and in others were subject to the discretion of the court.² The Fee Bill regulated, for all cases, not only for admiralty causes but also for suits in equity and cases at law, the compensation of clerks, marshals, witnesses, commissioners and proctors, and, on the revision of the statutes, these provisions of the bill were incorporated in the sections of the Revised Statutes above mentioned. Those portions which relate to costs and fees in admiralty will be found in the Appendix pp. 547-552.

§ 478. Proctor's Fees. (Rev. Stat. Sec. 824.)

The proctor is allowed a docket fee of twenty dollars on a final hear-

¹ Act of Feb. 26, 1853, 10 Stat. p. 161.

² See Costs in Civil Cases, 1 Blatch. 652.

ing in admiralty, except in cases where the recovery is under fifty dollars, in which case the docket fee is ten dollars.³ The proctor is also allowed a fee of two and a half dollars for each deposition taken and admitted in evidence.⁴ The proctor's fee of five dollars for removal from the lower to the higher court mentioned in Rev. Stat. § 824, is no longer taxed in the Second Circuit.⁵ The docket fee is taxable only on final hearing;⁶ this does not necessarily, however, mean a trial and entry of judgment, but some final disposition of the case by the court;⁷ payment of it cannot be enforced when there is a settlement out of court. Similarly, the mere taking of a deposition does not entitle the proctor to tax a deposition fee; the deposition must be used in evidence before the statutory fee becomes payable,⁸ and if taken but not used, no fee is taxable.⁹ Also, it must be taken in the particular cause, and if admitted from another suit the fee for it cannot be taxed.¹⁰

In some of the districts it is the practice to take the testimony in all cases before a commissioner; and the case is submitted to the court on the written evidence so taken, the court itself not hearing oral testimony. Whether the testimony of a witness so taken was a "deposition" for which a fee could be taxed under Rev. Stat. § 824, or whether the depositions referred to in that section were only depositions *de bene esse*, on *dedimus potestatem* and in *perpetuam rei memoriam* was a question on which the lower courts were divided. The Supreme Court, in the case of *Missouri v. Illinois*,¹¹ has decided that the deposition fee can be taxed for evidence so taken. This rule would no doubt cover testimony taken out of court by consent, before a com-

³ Rev. Stat. § 824.

⁴ *Id.*

⁵ See *post*, § 587.

⁶ *The Bay City*, 3 F. R. 47; *The Anchoria*, 23 F. R. 669; *Ryan v. Gould*, 32 F. R. 754; *The Mount Eden*, 87 F. R. 483; *Merritt, etc., Co. v. Catskill, etc., Co.*, 112 F. R. 442.

⁷ *The Alert*, 15 F. R. 620; *Price v. Coleman*, 22 F. R. 694; *The Mount Eden*, 87 F. R. 483; *Riser v. Southern R. Co.*, 116 F. R. 1014; *O'Flaherty v. Hamburg-American P. Co.*, 168 F. R. 411. A docket fee on reference, separate from docket fees for a trial, is not taxable; *Kelly v. The Topsy*, 45 F. R. 486. A docket fee is not taxable when the case is dismissed for lack of prosecution; *Wigton v. Brainerd*, 28 F. R. 29.

⁸ *Bernardin v. Northall*, 83 F. R. 241; *The Persiana*, 158 F. R. 912.

⁹ *Cahn v. Qung Wah Lung*, 28 F. R. 396; *Bernardin v. Northall*, 83 F. R. 241.

¹⁰ *Cary v. Lovell Mfg. Co.*, 39 F. R. 163.

¹¹ *Missouri v. Illinois, etc.*, 202 U. S. 598.

missioner or notary public; but the evidence of a witness taken on a reference to prove damages is not regarded as a deposition for the taking of which a fee can be charged.¹²

The court will protect a proctor from a collusive settlement to the prejudice of his rights to costs.¹³

As to proctor's fees on appeals, see post, § 587.

§ 479. Counsel Fees.

It was formerly customary in the admiralty court to award counsel fees. It is no longer permissible in ordinary cases.¹⁴ But the Supreme Court, in *Trustees v. Greenough*,¹⁵ held that the Fee Bill was intended to regulate only those fees and costs which are strictly chargeable as between party and party, and did not interfere with the power of a court of *equity* to make allowances to counsel out of funds under its control. The Fee Bill being equally applicable to admiralty as well as to equity, this rule has been extended to the admiralty side of the court, and allowances have been made as counsel fees out of a fund in control of that court.¹⁶ In *The Oregon*,¹⁷ which was a case of numerous claims by passengers to recover damages for insufficient accommodations and provisions, all consolidated into one suit against the vessel, the court allowed a proctor's fee of ten dollars for each claim filed.

§ 480. Clerk's Fees. (Rev. Stat. Sec. 828.)

A detailed list of the fees chargeable by the clerk for various services will be found in the Appendix, p. 547. For services not specified in the Fee Bill, he is entitled to further compensation, *i. e.*, he may receive an allowance for a transfer of a deposit from one depository to another, the change being made at the request of the parties, for their pecuniary benefit, imposing upon the clerk additional cares, responsibilities and

¹² See *James Dalzell's Sons v. The Daniel Kaine*, 31 F. R. 746; *The Mount Eden*, 87 F. R. 483.

¹³ *The Nahor*, 9 F. R. 213; *The Ontonagon*, 19 F. R. 800.

¹⁴ *The Baltimore*, 8 Wall. 377.

¹⁵ *Trustees, etc., v. Greenough*, 105 U. S. 527.

¹⁶ *The St. Johns*, 101 F. R. 469; *The Gordon Campbell*, 131 F. R. 963.

¹⁷ *The Oregon*, 133 F. R. 609. The authority of the court to so do is not clear. There was no fund in Court in that case, the vessel being released on bond, and the decree being entered against the sureties on the bond; and in a consolidated case it is generally considered that but one docket fee can be allowed. See post, sec. 490. The additional proctor's fees in this case were apparently regarded a part of the damages, not strictly as proctor's fees.

duties.¹⁸ The clerk is entitled to commissions on moneys paid into court in limitation of liability proceedings.¹⁹

§ 481. Marshals Fees (Rev. Stat. Sec. 829.)—Auctioneer.

The marshal's fees for the various services required of him are likewise itemized in the Fee Bill, a copy of the provisions being inserted herein at pp. 548-550. Where a vessel is sold by the marshal, he is entitled to commissions of 2½% on sums under \$500 and 1½% on sums in excess of \$500, and where parties settle the case out of court without a sale, the marshal is entitled to commissions of 1% on the first \$500 and one-half of 1% on the excess of sums over \$500;²⁰ but this is only when there has been an actual seizure, and does not apply to cases when the marshal has performed no duty.²¹ In New York, the marshal's commissions are computed on gross proceeds in case of sale, and on the agreed or appraised value if the vessel is bonded; but if the marshal is dissatisfied with the valuation agreed on by the parties, he may himself have an appraisal.²²

The statute provides that the marshal may be allowed for his necessary expenses of keeping boats, vessels or other property, not exceeding two dollars and fifty cents a day. The courts have seemed to treat this provision as applicable only to the ordinary expense of a keeper, and have held that extraordinary expenses of keeping property can be allowed as costs in addition to the statutory allowance of \$2.50.²³ In the case of *The Conqueror*,²⁴ the Supreme Court said that if the marshal were limited to \$2.50 per day, the libellant was not, and might employ extra men, subject to liability to pay for their services if he failed in his suit. There can be no doubt but that the marshal is entitled to employ extra labor, e. g. for pumping or wharfage²⁵ when

¹⁸ *The Advance*, 60 F. R. 422.

¹⁹ *The Vernon*, 36 F. R. 113.

²⁰ Rev. Stat. § 829; *The Russia*, 5 Ben. 84; *The City of Washington*, 13 Blatch. 410; *The Clintonia*, 11 F. R. 740; *Robinson v. Bags of Sugar*, 35 F. R. 603; *Smith v. The Morgan City*, 39 F. R. 572. The marshal is entitled to such commissions, even though the libel does not claim money damages, as, e. g., a suit for possession; *The Mary H. Brockway*, 49 F. R. 161. The provision applies to a suit by the government for a forfeiture; *The Captain John*, 41 F. R. 147.

²¹ *The Isabel*, 79 F. R. 103; See *The Morgan City*, 39 F. R. 572.

²² Dist. Rule 71.

²³ *The F. Merwin*, 10 Ben. 403; *The Perseverance*, 22 F. R. 462; *The Nellie Peck*, 25 F. R. 463; *The Captain John*, 41 F. R. 147.

²⁴ *The Conqueror*, 166 U. S. 110.

²⁵ *U. S. v. 300 Barrels*, 1 Ben. 72; *The Novelty*, 9 Ben. 195; *The Nellie Peck*,

it is necessary for the preservation of the property. When a vessel is held under several processes, the marshal's fees may be split up among the several libellants.²⁶ It is customary for the marshal to employ an auctioneer in selling property and the beneficial results of employing a professional seller are such that the auctioneer's charge is rarely objected to. Nevertheless, there is no provision of law for such a disbursement on the part of the marshal, and his disbursement for auctioneer's services, if objected to, must be disallowed.²⁷

If the marshal's bill is objected to in any of its items, the practice is to call upon him to tax it before the clerk, on notice to the objecting party. The marshal's bill may be paid by the prevailing party and included as a part of the judgment against the loser. When there are proceeds of sale in court, the marshal may be paid out of such proceeds without waiting for the final decree in the cause, and he may demand his fees in advance.²⁸

§ 482. Commissioner's Fees—Foreign Commissioner on Depositions taken Abroad.

By Section 19 of the Act of May 28, 1896, 29 Stat. p. 184, the office of commissioner of the Circuit Court was abolished and provision made for the appointment of commissioners by the district courts. The fees of such commissioners are set forth in section 21 of the Act, (24 Stat. p. 184), and are concerned mostly with the services of the commissioner as a committing magistrate on the criminal side of the court. On the admiralty side, commissioners are allowed an attendance fee of three dollars for a reference in a litigated matter; for taking and certifying depositions to file in civil cases, ten cents a folio, and ten cents a folio for each copy furnished to a party on request. See Appendix, p. 550. In practice, commissioners on admiralty references are accustomed to receive much larger compensation for hearing and reporting on an admiralty reference; but this is by consent of the parties.

It is wise for a commissioner at the outset of a reference, to have the parties enter a formal consent that the commissioner shall not be bound by the statutory rate as to his compensation; if this is omitted, the commissioner can receive but three dollars per day on a reference,

25 F. R. 463; *The Perseverance*, 22 F. R. 462; *The Robert R. Kirkland*, 153 F. R. 863.

²⁶ *The Circassian*, 6 Ben. 512.

²⁷ *The John E. Mulford*, 18 F. R. 455.

²⁸ *The Allegheny*, 85 F. R. 463; *Cavender v. Cavender*, 10 F. R. 828; *Duy v. Knowlton*, 14 F. R. 107.

if either party objects to his receiving more.²⁹ The commissioner is entitled to an attendance fee for attending at a time and place properly set for a hearing, though the parties do not attend.³⁰

Where a *dedimus potestatem* is issued abroad for the purpose of taking testimony under Rev. Stat. § 866, or where depositions are taken within the United States but more than 100 miles from the place of trial under Rev. Stat. § 863, the reasonable charges of the Commissioner, consul or magistrate before whom the testimony is taken are taxable by the successful party. If the amount of the charge is questioned, it must be supported by evidence showing the existence of a customary rate at the place of taking the depositions, or proof that the charge is reasonable for like work at the place of payment.³¹

§ 483. Witness Fees—Subpoena—Mileage. (Rev. Stat Sec. 848.)

Witnesses are entitled to an attendance fee of \$1.50 per day and mileage at the rate of 10 cents a mile for the distance between their places of residence and the place of trial,³² and a proper subpoena fee consists of the fee for one day's attendance together with the necessary mileage. The compelling power of a subpoena runs anywhere throughout the district of the court to which the witness is summoned,³³ and through other districts to a distance of 100 miles from such court.³⁴ Hence when a witness comes from outside the district, his taxable mileage is limited to ten dollars, no matter how far he has traveled;³⁵ but if he comes from a place within the district, but more than 100 miles from the place of trial, his actual mileage at 10 cents a mile may be taxed.³⁶ The fees of witnesses who attend but are not

²⁹ U. S. v. Patterson, 150 U. S. 65.

³⁰ The Wavelet, 25 F. R. 733.

³¹ The Frisia & The John N. Parker, 27 F. R. 480.

³² The attendance fee is for each day's attendance in readiness to testify, whether the case is on or not; Whipple v. Cumberland Ins. Co., 3 Story 84; Hance v. McCormack, 1 Cranch C. C. 522. No more than the Statute allows can be taxed, though the party actually disbursed more than that amount to his witnesses; Leary v. The Miranda, 40 F. R. 607.

³³ Driskill v. Parish, 5 McLean, 241.

³⁴ Rev. Stat. § 876.

³⁵ The Leo, 5 Ben. 486; Beckwith v. Easton, 4 Ben. 357; Anon, 5 Blatch. 134; Ins. Co. v. Steamship Co., 29 F. R. 237; Hannis v. McLaughlin, 29 F. R. 70; The Syracuse, 36 F. R. 830.

³⁶ Young v. Merchants' Ins. Co., 29 F. R. 273; Smith v. Schult, 40 F. R. 143; Hunter v. Russell, 59 F. R. 964; *Contra*, Smith v. Chicago, etc., R. Co., 38 F. R. 321. See The Vernon, 36 F. R. 113.

examined can be taxed.³⁷ Witness fees cannot be taxed for the attendance of a party to the suit.³⁸

§ 484. Printer's Fees. (Rev. Stat. Sec. 853.)

Since a suit *in rem* is a suit against all the world, notice of the suit must be given to all the world, and this notice is given by publication. Sec. 853 of the Revised Statutes provides that the cost of publishing any notice or order required by law, or the lawful order of any court in any newspaper, is taxable at the rate of forty cents per folio for the first insertion and twenty cents a folio for each subsequent insertion. This compensation includes the furnishing by the printer of evidence of publication. The term folio means one hundred words, counting each figure as a word.³⁹ The cost of printing the record on appeal is a taxable disbursement in the second circuit.⁴⁰

§ 485. Costs Allowed Apart from the Fee Bill—Stenographer's Fees.

The courts have held, in this as in many other cases, that the provisions of the statutes are not exclusive; and that the costs and fees taxable in an admiralty suit are not confined solely to the costs and fees mentioned in the fee bill.⁴¹ The general power of the court to regulate its own practice gives it the power to order certain things to be done, or to allow a method of procedure which entails expense, and to include such expense as a part of the necessary expenses of the suit, chargeable as costs against the losing party. Thus, while the fees of a stenographer are usually, by consent beforehand, made a taxable disbursement, they are not taxable in ordinary cases without such consent: but the fees of a stenographer not consented to but ordered by the court, are taxable:⁴² also, the premium paid to a surety company or a bank,⁴³ which has given a stipulation for a party to the suit, and the expense of looking up the

³⁷ *Hathaway v. Roach*, 2 Wood. & M. 63; *Clark v. American Dock Co.*, 25 F. R. 641.

³⁸ *Nichols v. Brunswick*, 3 Cliff. 88; *Hathaway v. Roach*, 2 Wood. & M. 63; *The Elizabeth & Helen*, 4 Ben. 101.

³⁹ Rev. Stat. § 854.

⁴⁰ *Hake v. Brown*, 44 F. R. 734.

⁴¹ *Trustees v. Greenough*, 105 U. S. 527.

⁴² *The E. Luckenback*, 19 F. R. 847; *Rogers v. Brown*, 136 F. R. 813.

⁴³ *The South Portland*, 95 F. R. 295; *Jacobsen v. Lewis, etc., Co.*, 112 F. R. 73; *The Bencliff*, 158 F. R. 377; *The John D. Dailey*, 158 F. R. 642; *contra*, *The Willowdene*, 97 F. R. 509; See *The Robert Dollar*, 116 F. R. 79; *The Hurstdale*, 171 F. R. 607 (bank).

standing of suspicious sureties offered,⁴⁴ have been held to be taxable as costs. It cannot be doubted that other proper expenses rendered necessary by a rule of the court, or by order, or asked for, allowed and approved by the court, can be included and taxed as costs.⁴⁵

§ 486. Costs Against Government.

Costs are not usually decreed against the Government,⁴⁶ but, in the absence of a certificate of probable cause for bringing the suit, may be given against a government official, prosecuting in his own name a government suit.⁴⁷

§ 487. Costs on Dismissal for Lack of Jurisdiction.

When a cause is dismissed for lack of jurisdiction in the court, costs are not allowed on account of the want of power to award them.⁴⁸ There is a distinction, however, to be drawn between a case in which the court is wholly and apparently without jurisdiction from the first, and a case where the lack of power in the court to entertain the suit is disclosed only by defendant's plea and evidence; as when the libel alleges a maritime lien, which the defendant controverts, and the evidence discloses that there was in fact no maritime lien. In such a case the court cannot be said to have been without jurisdiction, and costs are dealt with as usual.⁴⁹

§ 488. Costs and Fees in the Discretion of the Court.

What are proper items of disbursements is one thing. Whether they are to be allowed as costs against a party to the suit is quite another. And in this matter the court of admiralty has always exercised the widest latitude. Costs are always in the discretion of the court, and while, in most cases, the award of costs follows the decree, this is only because the court, in its discretion, allows it to be so. The court has

⁴⁴ *Simpson v. Sticks of Timber*, 7 F. R. 243; *The Sarah E. Kennedy*, 25 F. R. 672.

⁴⁵ *R. R. Co. v. Collector*, 96 U. S. 594; *Hathaway v. Roach*, 2 Wood. & M. 63; *Dennis v. Eddy*, 12 Blatch. 195; *Jordan v. Agawam*, 3 Cliff. 239.

⁴⁶ *U. S. v. Hooe*, 3 Cranch 73; *Sam v. Barker*, 2 Wheat. 395; *The Antelope*, 12 Wheat. 456; *U. S. v. Ringgold*, 8 Pet. 150; *Same v. McLemore*, 4 How. 286; *Same v. Boyd*, 5 How. 29; Supreme Court Rule 24 (4); C. C. A. Rule 31 (4).

⁴⁷ See *The Conqueror*, 166 U. S. 110.

⁴⁸ *The McDonald*, 4 Blatch. 477; *Wenberg v. Cargo*, 15 F. R. 285; *Cooper v. N. H. S. Co.*, 18 F. R. 588; *Pentlarge v. Kirby*, 20 F. R. 898; *The Lindrup*, 70 F. R. 718; *Reliance Co. v. Rothschild*, 127 F. R. 745; *The Mary F. Chisholm*, 129 F. R. 814.

⁴⁹ *Lowe v. The Benjamin*, 1 Wall. Jr. 187; *The City of Florence*, 56 F. R. 236; *The Francesco*, 118 F. R. 112.

entire power to decree for a party to the full amount claimed, and yet award costs against him, or to divide the costs, or to refuse costs altogether. Circumstances of equity or iniquity, of hardship or of negligence, induce the court in many cases to depart from the rule that costs follow the decree. The disposition of the costs of the suit is often used by the court as a means of amercing either of the parties for misconduct or for inducing unreasonable and unnecessary litigation. Such matters vary with the varying circumstances and equities of particular suits, and numberless instances can be found in the reports, only a few characteristic cases being cited here.⁵⁰

§ 489. Costs on Multiplicity of Suits—Cross-Suits.

Whenever there are several actions or processes against persons who might legally be joined in one action, and whenever there are several libels against any vessel or cargo which might be joined in one libel, only the costs of one suit can be allowed, except on special cause shown.⁵¹ On cross-suits, heard together, only one bill of costs is taxable.⁵²

§ 490. Costs where Suits are Consolidated.

In causes of like nature, or relative to the same question, the court has full power to make any orders with a view to avoiding unnecessary costs, and especially to consolidate causes. The order to consolidate will be made on application to the court, on notice to the other party,⁵³ and the court may compel several suits resting on the same matter of right or defence to be tried together.⁵⁴ In cases where a number of libellants file libels against the same property, which libels are afterwards consolidated into one suit, it is the practice in New York to allow a docket fee and disbursements to the libellant first filing his libel, and their disbursements only to the remaining libellants.⁵⁵ Only

⁵⁰ *Hutson v. Jordan*, Ware, 393; *The Maggie J. Smith*, 123 U. S. 349; *Dyer v. Nat. S. S. Co.*, 118 U. S. 507; *The Florence P. Hall*, 14 F. R. 408, 418; *The Maryland*, 19 F. R. 551; *The O. M. Hitchcock*, 25 F. R. 777; *The Rosedale*, 20 F. R. 447; *The Marinin S.*, 28 F. R. 664; *The Stelvio*, 34 F. R. 431; *The D. L. & W. No. 6*, 53 F. R. 284; *McNeil v. The Pioneer*, id. 279; *McNamara v. The Atlantic*, id. 607; *Union Ice Co. v. Crowell*, 55 F. R. 87; *The E. A. Shores, Jr.*, 79 F. R. 987; *The Asiatic Prince*, 103 F. R. 676.

⁵¹ *The J. W. Tucker*, 20 F. R. 129; *The State of Missouri*, 76 F. R. 376; *The H. C. Grady*, 84 F. R. 226; see *The Oregon*, 133 F. R. 609, and *ante*, § 479, note 17.

⁵² *The W. B. Castle*, 16 F. R. 927; *The Rabboni*, 84 F. R. 681.

⁵³ Rev. Stat. 982; *The Etna*, Ware, 474; *Peterson v. Watson*, Blatch. & H. 487.

⁵⁴ Dist. Rule 5.

⁵⁵ *The J. W. Tucker*, 20 F. R. 129.

one docket fee is allowed in a consolidated cause,⁵⁶ but each libellant is allowed his disbursements. The same practice prevails where there is one original libel, and subsequent intervening petitions or libels.⁵⁷

§ 491. Costs where Damages are Divided.

In cases where both parties are held in fault the costs, as well as the damages are divided,⁵⁸ even if only one of the parties has suffered loss.⁵⁹ If damages are divided and but one party has suffered loss, the practice in the Southern District of New York is to divide the costs before reference, but to give full reference costs to the party proving damages. Instead of actually dividing the costs, the rule often prevails of requiring each party to pay his own costs.⁶⁰ When both parties have been held entitled to recover, each party should tax a full bill of costs, which bills are then set off one against the other, and the party taxing the larger bill is entitled to one-half the excess of his bill over that of his opponent. See *ante*, § 471.

§ 492. Costs Apportioned.

It is often the case, from the peculiar forms of admiralty proceedings, that justice requires that costs should be apportioned, as, when the court discriminates between parties in its decree, or when the property is in custody in several cases, and the fees of the marshal for his custody and keeping of the property have accrued for a common benefit to unconnected parties. In such, and similar cases, the court will sometimes apportion the costs.⁶¹

§ 493. Costs on Tender or Offer of Judgment.

The strict rules of the common law as to tenders do not prevail in admiralty. A sincere offer to pay an amount which the court afterwards finds to have been sufficient, but which is rejected, will often

⁵⁶ *The Stanley Dollar*, 160 F. R. 911.

⁵⁷ *Butler v. The Julia*, 57 F. R. 233.

⁵⁸ *The America*, 92 U. S. 432; *Vanderbilt v. Reynolds*, 16 Blatch. 80; *The Pennsylvania*, 15 F. R. 814; *The Hercules*, 20 F. R. 205; *The Warren*, 25 F. R. 782; *The Wyanoke*, 42 F. R. 80; *The Horace P. Parker*, 76 F. R. 238. The docket fee is to be divided in such case; *The Bencliff*, 158 F. R. 377.

⁵⁹ *The Edward Luckenback*, 94 F. R. 544.

⁶⁰ *Donnell v. Amoskeag Mfg. Co.*, 118 F. R. 10.

⁶¹ *The Circassian*, 6 Ben. 512; *The John Walls, Jr.*, 1 Sprague, 178; *The Grapeshot*, 22 F. R. 123; *The Arctic*, 22 F. R. 126; *The Warren*, 25 F. R. 782; *The Asiatic Prince*, 103 F. R. 676; *The L. F. Munson*, 127 F. R. 767; *The Elton*, 135 F. R. 446; *The Bencliff*, 158 F. R. 377.

deprive the party so refusing of his costs, even though there was no actual production or proffer of money. In the New York districts, at any time not less than 14 days before trial, a defendant may serve a written offer to allow judgment to be entered against him in a specified amount, with costs to the date of the offer. If the libellant refuses and does not thereafter obtain a more favorable judgment, he cannot recover costs from the time of the offer; and if after such offer and refusal, defendant deposits the amount so offered, together with the clerk's fees, and libellant fails to obtain a more favorable judgment, the libellant must pay costs from the time of the deposit.⁶² There is also a similar practice after interlocutory decree in favor of the libellant, which enables a defendant to avoid the expenses of a reference.⁶³ The libellant may at any time obtain moneys so deposited in court for his benefit, without prejudice to his right to litigate for a larger amount.⁶⁴ Tenders made after suit is begun should be made before answer, and the fact pleaded in the answer. Tenders or offers of judgment should include all of the libellant's taxable costs up to the time of the tender and offer, including the clerks and marshal's fees, if the tender is made after suit begun, but not if made before suit;⁶⁵ and it should be specified what is paid in as damages and what as costs;⁶⁶ and if libellant does not recover more than the amount demanded, he will be charged with costs.⁶⁷ The docket fee and deposition fees need not be included in a tender made before trial.⁶⁸

§ 494. Miscellaneous Provisions as to Costs.

Witness fees cannot be taxed for a party to the suit.⁶⁹ The cost of a survey may not be taxed, nor the cost of making a map of the location of a collision.⁷⁰ The charges of experts called by a party on his own

⁶² Dist. Rule 36; *The Dennis Valentine*, 47 F. R. 664, 57 id. 398; *The Glencairn*, 78 F. R. 379; *Edward Hines Lumber Co. v. Chamberlain*, 118 F. R. 716.

⁶³ Dist. Rule 37.

⁶⁴ Dist. Rule 38.

⁶⁵ *The Serapis*, 37 F. R. 436.

⁶⁶ *The Good Hope*, 40 F. R. 608.

⁶⁷ *Laverty v. The Dennis Valentine*, 57 F. R. 398.

⁶⁸ *Merritt, etc., Co. v. Catskill, etc., Co.*, 112 F. R. 442; *Swan v. Wiley*, 161 F. R. 236.

⁶⁹ *Nichols v. Brunswick*, 3 Cliff. 88; *Hathaway v. Roach*, 2 Wood. & M. 63; *The Elizabeth & Helen*, 4 Ben. 101.

⁷⁰ *Tuck v. Olds*, 29 F. R. 883; *Contra*, *Whipple v. Cumberland*, 3 Story, 84; *The Vernon*, 36 F. R. 113.

behalf are not taxable.⁷¹ A docket fee and deposition fees are not allowed to a party who conducts his own case.⁷² The marshal is entitled to a commission in a suit settled out of court, even though the suit is for possession and not for money damages.⁷³ A witness is not entitled to *per diem* fee while travelling to and from the place of trial.⁷⁴ On default and reference only one docket fee is allowed.⁷⁵ The costs of a suit for salvage cannot be recovered in a suit for the tort which created the necessity for salvage.⁷⁶ The costs and expenses of a suit at law, rendered necessary by the refusal of a party to carry out his agreement to arbitrate claims, cannot be recovered in an independent suit therefor.⁷⁷ Costs are disallowed when the libel is dismissed on grounds not pleaded.⁷⁸ When libellant is entitled to nominal damages only, the libel may be dismissed without costs.⁷⁹ Costs may be recovered personally against a claimant who has signed stipulations, when the damages exceed the amount of such stipulations.⁸⁰

Where the marshal makes an actual attachment of goods in a warehouse, in the custody of the collector of customs, and sends a keeper daily to the warehouse, he is entitled to tax as custody fees the amount actually paid such keeper.⁸¹ Where a fund in court was insufficient to pay all claims, costs were added to the various claims, and all paid *pro rata*.⁸²

§ 493. Taxation of Costs.

Bills of costs are taxed by the clerk on two days' notice to the opposite party and may be retaxed as of course if the two days' notice is not given.⁸³ Vouchers for disbursements other than the moneys disbursed to officers of court, or an affidavit of payment, must be exhibited and filed.⁸⁴ The losing party is also entitled to an affidavit as

⁷¹ *The William Branfoot*, 52 F. R. 390.

⁷² *Gorse v. Parker*, 36 F. R. 840.

⁷³ *The Mary H. Brockway*, 49 F. R. 161.

⁷⁴ *Carter v. Sweet*, 84 F. R. 16; *Greggsby C. Co. v. Louisiana, etc., Co.*, 123 F. R. 751.

⁷⁵ *In re Trundy*, 18 F. R. 607.

⁷⁶ *Greenwood v. The Fletcher*, 42 F. R. 504; *La Champagne*, 53 F. R. 398; *The C. R. Stone*, 68 F. R. 934.

⁷⁷ *Munson v. Straits of Dover S. S. Co.*, 99 F. R. 787.

⁷⁸ *The Ocean Express*, 22 F. R. 176.

⁷⁹ *Munson v. Straits of Dover S. S. Co.*, 102 F. R. 926.

⁸⁰ *The Southwark*, 129 F. R. 171.

⁸¹ *Jorgensen v. Cement*, 40 F. R. 606.

⁸² *The Grapeshot*, 22 F. R. 123.

⁸³ Dist. Rule 56.

⁸⁴ *Id.*

to the residences of the witnesses and as to the fact that they were actually brought from their places of residence and were actually paid, in order that the charges for mileage may be examined.⁸⁵ The statutes provide that a taxed bill of costs must be filed.⁸⁶ In the New York districts, it is customary to tax the costs before entering the decree and to incorporate the costs in the final decree. In other districts, the decree is entered for the damages alone and the taxed bill is filed apart from the decree; but its amount is of course included in the execution.

§ 496. Appeal from Taxation.

An appeal may be taken by either party from the clerk's allowance or disallowance of any item, even the clerk's own charges. It is the duty of the clerk thereupon to mark on the bill of costs the allowance or disallowance of the items and the fact that a party objects thereto. An appeal may be taken orally and *instanter*, and the matter carried at once before the judge in chambers, after notice to the taxing officer, to the officer whose fees are objected to, if the officer is in the building, and to the attorney for the opposite party.⁸⁷ If a more formal appeal is desired, the appeal may be brought on for hearing at the next motion day.

Costs under 59th Rule, see *ante*, § 410.

Costs in Suits *in Forma Pauperis*, see *ante*, § 436.

Costs in Limitation of Liability Proceedings, see *post*, § 558.

Costs on Appeals, see *post*, § 587.

⁸⁵ *The Sallie P. Linderman*, 22 F. R. 557.

⁸⁶ Rev Stat. § 983.

⁸⁷ Dist. Rule 56.

CHAPTER XXXII.

EXECUTION.

§ 497. The Execution.

In all cases of a final decree for the payment of money, the libellant may have a writ of execution in the nature of a *fiery facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulator.¹ For form of execution, see Appendix, pp. 662-664.

Executions in favor of the United States may run throughout the United States, and, in cases of individuals, they may run throughout the state, even where there are two districts in the state; but they must, in all cases, be issued from and returnable to, the court where the decree is obtained.²

§ 498. Summary Judgment against Sureties.

In suits *in rem*, after final decree in favor of the libellant, it is not necessary or proper to issue execution against the claimant, unless he has signed the stipulation,³ but the sureties are called upon to pay the decree. Where a bond to the marshal has been given, execution may issue at once against the sureties,⁴ but where there has been a stipulation for value given, or a stipulation to abide the decree, the sureties, and the principal also if he has signed the stipulation, are called upon to show cause why execution should not issue against them, their goods, chattels and lands.⁵ In the New York districts, it is customary to incorporate in a final decree in favor of libellant an order to the effect that the stipulators for value and for claimant's costs do cause the

¹ Ad. Rules 21, 48; Dist. Rule 10.

² Rev. Stat. §§ 985, 986.

³ *The Monte A.*, 12 F. R. 331; *Insurance Co. v. Alexandre*, 16 F. R. 279; *The Ethel*, 66 F. R. 340.

⁴ *The Belgenland*, 108 U. S. 153; *The Columbia*, 109 F. R. 660.

⁵ *Smith v. Pendergast*, 82 F. R. 504; *The Baltic*, Blatch. & H. 149; *The Sydney*, 47 F. R. 260.

engagement of their stipulation to be performed, or show cause within four days after the expiration of the time to appeal, why execution should not issue against them, their goods, chattels and lands. The same form, so far as costs are concerned, may be entered against a libellant's stipulators. If, therefore, the decree is entered and a copy served, with such provision contained therein, and the decree is not satisfied within the time allowed, viz. four days after the expiration of the ten days allowed for appealing, the party in whose favor decree has been entered may go to the court, *ex parte*, with proof, by affidavit, of proper service of notice of the entry of final decree and of the order on the sureties to show cause; and of the fact that the decree remains unsatisfied and unappealed from, that the sureties have shown no cause, and that the time to do so has expired; and thereupon the court will enter a summary judgment against the sureties, on which an execution may be issued forthwith to the marshal. The above practice applies to bonds on appeal, as well as to stipulations originally given in the suit.⁶

If execution against sureties is returned unsatisfied a court of admiralty has no power to examine them in supplementary proceedings, or with a view to discover and sequester their property, or to punish them for contempt for failure to perform their stipulations. The power of the court is at an end after execution is issued and returned unsatisfied, the sureties are merely personal judgment debtors of the judgment creditor, and, in order to follow up the property of a delinquent surety, the judgment of the admiralty court must be sued on in some other court which has greater powers in such direction than has a court of admiralty.⁷

§ 499. Execution Against Property—*Venditioni exponas*.

In cases *in rem*, where there has been a decree of condemnation and sale, a *venditioni exponas* is the proper execution to issue, if the property be still in custody. This is the regular writ of the court, issued to the marshal and commanding him to sell the property at a certain time and place and upon certain notice, and to bring the proceeds into court. The sale is always by auction. A *venditioni exponas* is the method of directing a sale by the court, whether a sale on execution or an interlocutory sale as treated of heretofore, §§ 371, 372.

⁶ Smith v. Pendergast, 82 F. R. 504.

⁷ The Blanche Page, 16 Blatch. 1.

§ 500. Sale by the Marshal under Venditioni Exponas.

If the property is in custody, and a *venditioni exponas* issues, the marshal, on proper public notice, which is usually a publication for six days unless the court directs a shorter period,⁸ sells the property and is bound to pay the proceeds forthwith into the hands of the clerk, to be placed in the registry of the court, and to be disposed of by the court according to law.⁹ The sale must be confirmed by the court before it becomes absolute, and it has been held that until that is done, the bid accepted by the marshal may be rejected on the offer of a higher price, and a new sale ordered.¹⁰ Such is not the practice in the New York Districts, where the court will confirm as of course a sale which was regularly had after due advertisement, and there is no charge of fraud in the selling. Bidders at public auction are to be considered as well as sellers, and it is not fair to the former that their regular offer should be set aside because some sluggish bidder has later offered a higher price. The successful bidder at public auction has the right to be protected, even if he has chanced to obtain a bargain. And this is the rule of the courts in some of the other districts.¹¹

§ 501. Duty of the Marshal.

It is a great irregularity for the marshal to distribute the money, or any part thereof, to the parties, even according to the decree. His function, under a *venditioni exponas*, is solely to sell the property for cash, and bring the proceeds of the sale into court, deducting nothing but the expenses of the sale. The flexibility of admiralty process, of which mention has been often made, renders it highly improper for any of the officers of the court to meddle with that which may, in the end, be materially modified by the court.¹²

It often happens that there are liens upon the property sold, accruing while the property is in custody of the law, such as wharfage, storage, labor, etc. These the marshal has no absolute right to pay without the order of the court; much less would he have the right to discharge previously existing liens of any description.¹³

But the practice has grown up in New York that the marshal

⁸ D. C. Rules 35 and 35a.

⁹ Ad. Rule 41.

¹⁰ *The Sue*, 137 F. R. 133.

¹¹ See *The Planter*, 163 F. R. 667; *The Garland*, 16 F. R. 283; *Dailey v. Doe*, 3 F. R. 903.

¹² *The Collector*, 19 U. S. (6 Wheat.) 194; *The Phebe, Ware*, 360.

¹³ *The Phebe, Ware*, 360; *The Collector*, 19 U. S. (6 Wheat.) 194.

should pay any bills incurred while the property is in his custody for its safe keeping, such as wharfage, pumping, etc., without a previous order of the court, and include them in his bill of costs, subject of course to the necessity of sustaining the items, if objected to on taxation. Other districts have the same practice.¹⁴

§ 502. Moneys must be Deposited in Bank.

All moneys paid into the hands of the clerk, to be deposited in the registry of the court, must be immediately deposited, in the name of the court, in some bank designated by the court as the depository of the registry; and that account must always be kept by the bank, subject to the condition that no money shall be drawn out, except by a check signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit, and out of what fund, in particular, it is paid.¹⁵ It is the duty of the clerk to keep a regular book containing a memorandum and copy of all the checks so drawn, and the dates thereof, and it is his duty, at every term, to report to the court in detail, the moneys in the registry.

§ 503. Distribution of Proceeds. I.

After the proceeds of a sale are in the registry, there not unfrequently arise grave questions as to the matter of distributing the funds; for, in admiralty, the principles of distribution vary according to circumstances. Proceeds are sometimes distributed in the order in which the liens were created, sometimes in the reverse of that order, and sometimes to all alike, ratably. The order of distribution, or marshalling the proceeds, is settled by the court according to the legal priority. The law of priorities among liens has no place in this work.

§ 504. Distribution of Proceeds. II.

Where the owner of a vessel, against which there are various claims, allows her to be sold under admiralty process, but retains his interest in the proceeds by filing an appearance and a claim, and thus is enabled to examine and contest other liens filed, there is ordinarily no difficulty in the practice. If an alleged lien is asserted and libel filed thereon, the claimant can test the validity of the lien by filing an answer and taking the usual proceedings. And liens which the claimant admits to be valid may be allowed to go by default, and interlocutory decree

¹⁴ The Robert R. Kirkland, 153 F. R. 863.

¹⁵ Ad. Rule 42.

against the fund entered, subject to the right of claimant or of lienors to contest the amounts if they so desire. The difficulty of practice usually arises where the vessel is entirely bankrupt, the owner does not appear to prevent the sale or supervise the distribution of proceeds, there are a number of libels or petitions filed against the vessel or her proceeds and the latter are insufficient to pay all of the claims in full. In this case each libellant is interested to defeat the claims of the other libellants. If it is merely a question of amount, a libellant may appear on the reference of another libellant, and by cross-examination and the introduction of independent testimony, may strive to reduce the opposing libellant's claim. But this is before the commissioner, and the latter has not the power to pass on the validity of a lien, unless such power is specifically given him. If one libellant, therefore, desires to contest the liens alleged by other libellants, it is his duty to file an intervenor's claim and answer, which is a very cumbersome practice, when the libels and petitions filed are numerous.

It would seem to be the proper practice, in such a case, for the court, of its own motion, to enter an order consolidating all of the libels and petitions filed, and to refer the whole to a commissioner, to report, not only the amount of each claim, but the validity of each lien, and the priorities among the liens, if any. Until the coming in of the commissioner's report, new libels or petitions filed after the first order and reference, should be similarly referred. Upon the reference, any libellant should be empowered, not only to prove the validity and amount of his own lien, but to contest both the validity and amount of any other claim. And the commissioner should make one report in the consolidated case, wherein the amounts and priorities of all the claims submitted should be set forth; and the court, after hearing the exceptions to the report filed by any interested party, should make one decree in the consolidated case, which should declare the priorities and amounts of the claims, and which should provide for the distribution of the fund in court in that order and amount.¹⁶ The practice of entering separate decree for each libellant in the full amount of his claims, and then a further general decree of *pro rata* distribution, has little to commend it.

§ 505. Proceeds in the Registry.

Any person having an interest in any proceeds in the registry of the court, may, by petition and summary proceedings, intervene for

¹⁶ The practice advocated in the text is the practice of the District of Connecticut. See Rule 24 of that court. The H. A. Baxter, 172 F. R. 260.

his interest for a delivery of them to him, notwithstanding the decree; and upon due notice to the opposite party, if any, the court will proceed summarily to hear and decide thereon, according to law and justice. If the party fail in his claim, or desert it, the court may award costs against him.¹⁷

But claims upon the proceeds of sale, except for seaman's wages, filed after the sale, will not be admitted to the prejudice of lienors under libels or petitions filed before the sale.¹⁸

§ 506. Remnants and Surplus.

It is often the case in proceedings *in rem*, that after a condemnation and sale, and payment of the libellant, there remains in court an unappropriated balance of the proceeds; this is sometimes called remnants and surplus. The party entitled to the whole or any portion of the residue, can obtain it only by petition to the court, on which the court will order a reference and compel the petitioner to prove his title to such residue in court, even if the petition is not opposed.

The proceeds of property which was affected by a lien, are still affected by it, in whosoever hands they may be. The regular sale of property, under a decree of the court, gives a good title against all the world, and hence the proceeds are often subject to demands which were not embraced in the suit; and the court, on motion or petition, will adjudicate upon the rights of parties claiming an interest in the remnants and surplus.¹⁹ Any specific vested lien upon the *res*, or upon the fund derived from it, is enforceable in admiralty against remnants and surplus, whether such interest was a maritime lien or not.²⁰

The party may also proceed against remnants by libel and monition in a new suit, if he have a lien upon them.²¹

In paying over a surplus, a court of admiralty marshals the fund only between owner and lien holders.²² But it is not necessary that a party should have a maritime lien in order to be recognized.²³ An equitable lien or a common law lien, or a lien under state statute will be

¹⁷ Dist. Rule 60: *The Phebe*, Ware, 859; *Brackett v. The Hercules*, Gilp. 189.

¹⁸ Dist. Rule 60.

¹⁹ *Brackett v. The Hercules*, Gilp. 184.

²⁰ *The Advance*, 68 F. R. 704.

²¹ *Andrew v. Wall*, 44 U. S. (8 How.) 568.

²² *The Edith*, 94 U. S. 518; *The Willamette Valley*, 76 F. R. 888; *The Lydia A. Harvey*, 84 F. R. 1000.

²³ Ad. Rule 48; *The Gordon Campbell*, 181 F. R. 968.

sufficient:²⁴ but a general creditor of the shipowner will not be recognized at all.²⁵

²⁴ *The Grace Greenwood*, 2 Biss. 131; *Harper v. A New Brig*, Gilpin, 536; *Proceeds of the Lady Franklin*, 2 Biss. 121; *The Ship Panama*, Olc. 343; *The Island City*, 1 Low. 375; *The Raleigh*, 2 Hughes, 44, 57; *Surplus of the Ship Trimountain*, 5 Ben. 246; *The Advance*, 63 F. R. 704; *The Wyoming*, 37 F. R. 543; *The Mary Zephyr*, 2 F. R. 824; *The Guiding Star*, 18 F. R. 263; *The E. V. Mundy*, 22 F. R. 173; *The Unadilla*, 73 F. R. 350; *The Katie O'Neill*, 65 F. R. 111; *The Gordon Campbell*, 131 F. R. 963; see the *Lydia A Harvey*, 84 F. R. 1000; *The Willamette Valley*, 76 F. R. 838; *The Balize*, 52 F. R. 414.

²⁵ *The Wyoming*, 37 F. R. 543; *The Mary Zephyr*, 2 F. R. 824; *The Balize*, 52 F. R. 414.

CHAPTER XXXIII.

PETITIONS—MOTIONS—ORDERS—RULES—NOTICES.

§ 507. **Special Proceedings.**

There are proceedings of an independent character connected with the powers of a court of admiralty, which are not properly actions or suits. These are originally commenced by petition, and carried to their final determination by the simple orders of the court, without any formal suit or process.

Such are proceedings for a survey, on the application of seamen alleging unseaworthiness, or, on the application of a master to authorize a sale by him, as master, or other proceedings, where a final decree or adjudication, *inter partes*, is not sought for, but where the aid of the court is sought, to authenticate, or give solemnity and impartiality to proceedings authorized by statute and by the general admiralty law. An original application to the court is made by petition: an application in a contested suit is made by motion. Whenever a party desires the order of the court, regulating, correcting, modifying, or arresting the proceedings in a case, or authorizing any incidental, ancillary, or provisional proceeding, he may apply to the court by petition or motion.¹

§ 508. **A Petition.**

If a petition be resorted to, the petitioner must state briefly and clearly the facts on which the demand for the relief is founded, either by a full statement, or by reference to the pleadings, depositions or other documents, and must close with a prayer for the relief desired, so framed as to inform the court and the opposite party, if there be one, of the relief demanded in the premises. The petition must be sworn to by the petitioner. A copy should, if possible, be served on any party having an adverse interest, with reasonable notice of the time of presenting the same to the court.

§ 509. **A Motion.**

In case a motion is resorted to, the facts must be brought before the

¹Rev. Stat. § 4556; *ante*, § 215; Dunlap's Prac. 129.

CHAPTER XXXIV.

LIMITATIONS.

§ 514. No Statute of Limitations.

There is no fixed rule of limitation of the time in which admiralty suits shall be brought, except in the cases of criminal suits, and suits quasi criminal. State statutes of limitation do not apply to admiralty suits,¹ though often, in the discretion of the court, adopted as a limit between living and stale claims.² Statutes of limitation are founded entirely upon public policy, rather than on sound principle. Indulgence to a debtor, and delay in prosecuting him, would seem not to form any good reason why the creditor should lose his debt. The policy of all nations has, however, fixed limits to that indulgence in certain cases, longer in one nation than in another, and almost as various as the classes of cases. These limitations have usually been subject to exceptions, one of which is against persons beyond sea, and all of which have their foundation in the inconvenience or impracticability of sooner enforcing the demand.

§ 515. Limitations are left to the Discretion of the Court.

If the omission to enact any statute of limitations, in civil cases of admiralty and maritime jurisdiction, sprang from the peculiar character of the cases, and the pursuits of many of those employed in maritime commerce, who are, for a large portion of their time in foreign countries, on the seas, and beyond the seas, urged by the strongest incentives of commercial necessity, as well as of public policy, to pursue their vocations without interruptions, and without being the masters of their own steps, it would not be the only instance in which the founders of the republic, and the framers of her first system of laws, silently manifested their remarkable forecast and prac-

¹The *Queen of the Pacific*, 61 F. R. 213; *Pacific Coast S. S. Co. v. Bancroft-Whitney Co.*, 94 F. R. 180; *Norfolk S. & C. Co. v. Owen*, 115 F. R. 778; *The Slingsby*, 116 F. R. 227, *aff'd* 120 F. R. 748; *Nesbit v. The Amboy*, 36 F. R. 925.

²The *Southwark*, 128 F. R. 149; *Bailey v. Sundberg*, 49 F. R. 583; *Southard v. Brady*, 36 F. R. 560; *Scull v. Raymond*, 18 F. R. 547.

tical wisdom. In such cases, the matter of limitations is best left as it is, to the discretion of the court, which can best judge, in view of all the circumstances, whether the demand be so stale as to be considered neglected and abandoned,³ availing itself of that principle of limitation in the administration of every system of jurisprudence, which is derived from the nature of things, and which is admitted in the universal maxim, "*Vigilantibus non dormientibus subveniunt leges.*" This is the constant practice of courts of admiralty. This discretion of the court is not mere caprice, nor will, nor arbitrary power. It is the sound legal discretion of cultivated reason, in which the circumstances of the parties, of the property, and of the transaction, the wants and convenience of commerce, the demands of public policy, and, most especially, the analogies of the local laws of limitations, are fully to be considered and carefully weighed.⁴ It is held, however, that laches in enforcing a lien will postpone such lien to others subsequently accruing.⁵

§ 516. Limitations in Criminal Cases.

In criminal and penal cases, and cases of forfeiture, there are limitations fixed by the acts of Congress. No person shall be tried for treason, or other capital offence, wilful murder excepted, unless the indictment for the same be found by a grand jury within three years next after the commission of the offence; nor shall any person be prosecuted, tried, or punished for any offence, not capital, except offences under the revenue or slave trade laws, unless the indictment

³ The Key City, 81 U. S. (14 Wall.) 653; but see Reed v. Ins. Co., 95 U. S. 23; The Conde Wilfreda, 77 F. R. 324; Colburn v. Factors, etc., Ins. Co., 20 F. R. 644; The Bristol, 20 F. R. 800; The Alaska, 33 F. R. 107; The Robert Gaskin, 9 F. R. 62; Sun, etc., Ins. Co. v. Miss., etc., Co., 14 F. R. 699; The Martino Cilento, 22 F. R. 859; The Columbia, 27 F. R. 704, 130 U. S. 201.

⁴ Brown v. Jones, 2 Gall. 477; Willard v. Dorr, 3 Mason, 91; The Rebecca, 5 C. Rob. 96; The Mentor, 1 C. Rob. 180; The Huldah, 3 id. 235; The Susanna, 6 id. 51; The Jonge Jan, 1 Dod. 453; The Sarah Ann, 2 Sumn. 206; Coppin v. Gray, 1 Yo. & Col. 209; Ferguson v. Fyffe, 8 Clark & Fin. 121; The John, 2 Dod. 338; The Eastern Star, Ware, 184; Edw. Jur. 149; The Clifton, 3 Hag. 117; The Rapid, id. 419; Wagner v. Baird, 48 U. S. (7 How.) 234; Coote's Prac. 6; The Saracen, 2 W. Rob. 451; S. C., 6 Moore, 56; Harmer v. Bell, 22 Eng. Law & Eq. 72; Saunders v. Buckup, Blatchf. & H. 264; The Robert Gaskin, 9 F. R. 62; The Lauretta, 9 id. 622; Scull v. Raymond, 18 id. 547; Coburn v. F. & T. Ins. Co., 20 id. 644; The Alaska, 33 id. 107; Southard v. Brady, 36 id. 560; The Amboy, 36 id. 925; The Key City, 81 U. S. (14 Wall.) 653; The Queen of the Pacific, 61 F. R. 213; The Queen, 78 F. R. 155.

⁵ The Young America, 30 F. R. 789; The F. W. Vosburgh, 93 F. R. 481.

or information for the same be found or instituted within three years from the time of committing the offence.⁶ This does not, however, extend to persons fleeing from justice.⁷

§ 517. Limitation on Seizures.

For a large number of offences against the revenue laws, ships and vessels and other property are specifically forfeited, and the forfeiture is enforced by proceedings *in rem* in admiralty.

The limitation of time within which such prosecutions for forfeitures must be brought has now been fixed at five years, as has also the limitation for the prosecution of crimes under revenue or slave trade laws.⁸

⁶ Rev. Stat. § 1044 and Act of April 13, 1876, 19 Stat. p. 32.

⁷ Rev. Stat. § 1043 to 1047; *Adams v. Woods*, 6 U. S. (2 Cranch), 336; *The U. S. v. Mayo*, 1 Gal. 397.

⁸ Rev. Stat. § 1047.

CHAPTER XXXV.

LIMITATION OF LIABILITY.

§ 518. History and Result of the Statute.

The system, by which owners of vessels are enabled to limit their liability to the value of their interest in the vessel and freight, has grown up in this country since about 1870. The first statute of the United States on the subject, which is the foundation of the system, was passed in 1851 (9 Stats. at Large, p. 635; Rev. Stat. § 4283 *et seq.*). A few cases had come before the court previous to 1870, in which that statute had been considered to some extent. But it was not till the decision of the Supreme Court in 1871, in the case of *Norwich Company v. Wright*,¹ in which the statute was held to be applicable to cases of collision, that the present system can be said to have been fairly launched. Since that time, cases under the statute have been numerous, and the courts by rule and decision have fairly settled the practice. The scope of the act has been largely widened, as well by the decisions of the courts, as by additional acts of Congress, until now a shipowner may obtain an absolute exemption from loss or damage to merchandise on board of this vessel, occurring by reason of fire, (unless such fire was caused by the design or neglect of the owner²),[✓] and in cases of damage, by other means than fire, occasioned without the privity or knowledge of the owner, the American or foreign owner of any vessel, steamer or canal boat, employed in sea-going or inland navigation, on a voyage, or in the custody of her owner and lying at a dock in her home port;³ or the charterer of a vessel who has manned, victualled and navigated the vessel at his own expense,⁴ may obtain from our courts a limitation of his liability to the value of his interest in the vessel and her freight pending, not only for the results of a

¹ *Norwich Co. v. Wright*, 80 U. S. (13 Wall.) 104.

² Rev. Stat. § 4282; *In re Old Dominion S. S. Co.*, 115 F. R. 845. But the statute does not relieve a shipowner from the liability to contribute in general average for losses arising from fire; *The Roanoke*, 59 F. R. 161.

³ *In re Michigan S. S. Co.*, 133 F. R. 577.

⁴ Rev. Stat. § 4286; *Smith v. Booth*, 110 F. R. 680.

simple disaster, including claims for personal injuries and death,⁵ but for the results of a disastrous voyage, including all debts due on ✓ account of the vessel save seamen's wages.⁶ It has been held that a British corporation might obtain in our courts such a decree, even where the disaster occurred within English jurisdiction.⁷ But the matter must be of admiralty cognizance before jurisdiction of such a proceeding can be entertained.⁸

There is not an entire uniformity of practice in cases under the statute in all the districts of the United States. It will therefore be understood that, unless otherwise stated, the practice of the New York Districts is here set forth.

§ 519. The Proceeding is Both in Rem and in Personam.

A cause of limitation of liability has the effect of a proceeding both *in rem* and *in personam*. In so far as it obtains possession of a certain fund, which it divides among certain creditors, it is a proceeding *in rem*. As it seeks to decree against certain persons and restrain their personal actions, it is a proceeding *in personam*. Judge Shipman, in *Levinson v. Oceanic Steam Navigation Co.*,⁹ asserted that it is a proceeding both *in rem* and *in personam*, and this is borne out by the words of the Supreme Court in the matter entitled *In re Morrison*,¹⁰ as follows: "The proceeding to limit liability is not an action against the vessel and her freight, *except where they are surrendered to a trustee*,¹¹ but is an equitable action."

§ 520. Time Within Which the Proceeding may be Taken.

There seems to be no limit of time, the expiration of which will cut

⁵ *Butler v. Boston, etc., S. S. Co.*, 130 U. S. 527; *The Albert Dumois*, 177 U. S. 240; *La Bourgogne*, 210 U. S. 95; *The Northern Queen*, 117 F. R. 906.

⁶ Rev. Stat. §§ 4282-4289; Act of June 26, 1884, 23 Stat. p. 57, § 18; Act of June 10, 1886, 24 Stat. p. 80, § 4. It is a little singular that the Supreme Court, in its amendment of Rule 54, promulgated in January, 1891, should have omitted all reference to these latter acts.

⁷ *Levinson v. Oceanic Steam Nav. Co.*, Fed. Cas. 8292. Though it does not appear in the report of this case, the catastrophe out of which the case arose was the wreck of the British steamship *Atlantic* upon the coast of Nova Scotia.

⁸ *Ex parte Phoenix Ins. Co.*, 118 U. S. 610.

⁹ *Levinson v. Oceanic Steam Nav. Co.*, Fed. Cas. 8292.

¹⁰ *In re Morrison*, 147 U. S. 14.

¹¹ Italics ours. In limitation of liability proceedings, the power of the admiralty court is similar to and as extensive as the power of a chancery court in an equity proceeding; *Oregon R. R. & N. Co., v. Balfour*, 90 F. R. 295.

off the owner of the vessel from taking advantage of the provisions of the statute,¹² though it will be seen hereafter that the time as to which the value of the vessel is to be fixed is the time of the end of the voyage, and if the proceeding is greatly delayed, it may be difficult in some cases to fix the value at the end of the voyage. An undue delay will sometimes cause the owner to pay certain costs. But apart from such considerations, he may apparently institute the independent proceeding in his own behalf at any time. He may wait until he is sued, and defend the case and appeal from an adverse verdict, and after affirmance by the appellate court, still file his libel for limitation of his liability.¹³ Such action on his part, while it will not prevent him from limiting his liability to the value of the vessel and her freight pending, will settle the fact of his liability to that amount, and will settle the amount of the damages of the claimants.¹⁴ And if the owner so delay taking action, the District Court may require him to pay the costs of the state court action before it will entertain the limitation proceeding, or will impose other terms.¹⁵ But with these qualifications, there seems to be no condition placed upon a shipowner's right to limit his liability at any time.

§ 521 Scope of the Limitation. I.

When the statute says that the liability of the owner "shall in no case exceed the value" of his interest (Rev. Stat. § 4283), or that "the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending" (Act of June 26, 1884, 23 Stat. p. 57), it must not be understood that these expressions mean that owners can run a vessel for an indefinite time or number of voyages, and, at the end, limit their liability for all the transactions of all the times or all the voyages to the value of the vessel and her freight pending at the end,¹⁶ or that it is the liabilities

¹² "Precisely when the owners of a ship in fault ought to be regarded as precluded from instituting proceedings for a limitation of liability might be difficult to state in a categorical manner. Perhaps they can never be precluded so long as any damage or loss remains unpaid;" *The Benefactor*, 103 U. S. 239, 245.

¹³ *The City of Norwich*, 118 U. S. 468; *The S. A. McCaullay*, 99 F. R. 302; *Gleason v. Duffy*, 116 F. R. 298; *The Ocean Spray*, 117 F. R. 971; *In re Starin*, 124 F. R. 101; *The City of Boston*, 159 F. R. 257.

¹⁴ *The Ocean Spray*, 117 F. R. 971; *In re Starin*, 124 F. R. 101.

¹⁵ *In re The Garden City*, 27 F. R. 234; *The S. A. McCaullay*, 99 F. R. 302; *Gleason v. Duffy*, 116 F. R. 298; *The Ocean Spray*, 117 F. R. 971; *In re Starin* 124 F. R. 101.

¹⁶ *The Puritan*, 94 F. R. 365.

arising out of some one disaster alone against which the owners can limit their liability. Neither of these views should be taken. The liabilities affected by the limitation must be the liabilities of *the voyage*. The voyage is to be taken as the unit on both sides of the question, but the limitation proceeding may cover claims arising out of more than one accident or event on the same voyage.¹⁷

It follows that whenever the owner shall take his proceeding to limit his liability, he must take it as of the time of the end of the voyage on which the liabilities against which he seeks to limit his liability arose. That is the time as to which the value of the vessel and freight pending are to be fixed, and that is the time when the liabilities to be limited must be ascertained.¹⁸

§ 522. Scope of the Limitation. II.

Where, therefore, an appraisement is had for the purpose of ascertaining the value of the interest of the owner in the vessel and her freight for the voyage, the subject of appraisal is the value at the time of the termination of the voyage in question, no matter what alteration of circumstance has since occurred or what subsequent liens have attached. Appraisers can take into account any subsequent events which have had the effect of increasing or diminishing the value at the said period, and can make allowances for them, and report to the court the true value at the time in question. But when a transfer of the *res* to a trustee is selected by the owner as the preferred method of procedure, such discretionary increase or decrease of the actual value transferred cannot be had, and yet the owner must transfer his true interest in the vessel or her freight to the trustees, or the proceeding will be of no avail. If, therefore, the proceeding is taken at the actual end of the voyage on which occurred the claims of loss or damage sought to be limited, the transfer to the trustee would be a simple transfer of the *res* in its condition at the time. But if the transfer is made later, the court must be assured by the affidavit supporting the motion for the order for the transfer, that there has been no diminution of the value of the ship, or, if there has been such a diminution, that the petitioner will make good the difference and will

¹⁷ The City of Boston, 159 F. R. 257.

¹⁸ The City of Norwich, 118 U. S. 468; The Great Western, id. 520; The Alpena, 8 F. R. 280; The Doris Eckhoff, 30 F. R. 140; Gokey v. Fort, 44 F. R. 364; The Anna, 47 F. R. 525; The Puritan, 94 F. R. 365. What the word "voyage" in the statute means was considered by the Supreme Court in the matter of La Bourgogne, 210 U. S. 95.

transfer to the trustee both the *res* and the additional amount required to bring the value of the whole surrender up to the value at the end of the voyage in question. If the owner should convey his interest to a trustee, and a claimant for damage alleges that the true interest has not been surrendered, it would be proper for the court to order an appraisement of the value of the interest of the owner in the *res* at the end of the voyage in question, notwithstanding the surrender, and to compel the owner, as a condition of obtaining his decree of limitation, to pay into court the difference between the appraised value, and her value when surrendered to the trustee as affected by subsequent happenings or the accruing of subsequent liens.

§ 523. Appropriate Proceedings.

The statute (Rev. Stat. § 4284) provides that "the freighters and owners of the property and the owner of the vessel or any of them may take the *appropriate proceedings* in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable, among the parties entitled thereto."

The Supreme Court, in Admiralty Rules 54 to 58 has outlined such proceedings, and in the Southern District of New York the practice is more particularly set forth in District Rules 73 to 78. Before writing of the practice under those rules, it is to be observed as follows of the provisions of the statute:

In *The H. F. Dimock*,¹⁹ the court points out four ways in which the statute may be availed of, viz: (1) by the simple answer of the shipowner when sued; (2) by his libel or petition, offering a transfer of the ship to a trustee appointed by the court under Section 4285 of the Revised Statutes; (3) by a similar libel or petition, offering, instead of a transfer of the ship, a stipulation, under Rule 54 of the Supreme Court in admiralty, to pay her value as appraised under the order of the court, or a deposit in court of the amount of such appraised value, and (4) by a creditor's suit for an apportionment and *pro rata* distribution. The latter was the method of procedure adopted in the *H. F. Dimock*, the libel being filed by the master of a vessel sunk in collision, against the colliding vessel and her owner, and against the owner of his own sunken vessel, and against all persons claiming damages against the colliding vessel or its owner by reason of the collision, alleging the inadequacy of the colliding vessel to respond in full for the damages, and therefore asking a *pro rata* distribution

¹⁹ *The H. F. Dimock*, 52 F. R. 598.

of her value and the value of her pending freight amongst all claimants in proportion to their losses. And the form of the proceeding was sustained, though the suit was for other reasons dismissed. The above methods are not necessarily exclusive. The Supreme Court has said that the rules "were intended to *facilitate* the proceedings of owners of vessels for claiming the limitation of liability secured by the statute,"²⁰ and if at any time it should appear that some proceeding not provided for by the rules was more appropriate for securing the result, it can hardly be doubted that such a proceeding would be sustained, and as to all details of proceeding not specifically provided for in the rules, the matter of their appropriateness for securing the result aimed at furnishes a criterion.

Thus, neither the statute nor the rules provide for the issuing of process to the marshal to seize the vessel on the filing of the petition. In fact, it has been held that possession of the vessel by the marshal or trustee is not necessary for the validity of the proceeding.²¹ When the owner voluntarily surrenders the *res*, of course process to the marshal is unnecessary. But in such a case as the *H. F. Dimock*, (*supra*), process was necessary, and it was issued without question. And in the case of *Oregon R. R. and Nav. Co. v. Balfour*,²² where the owner and lessee of a barge and tow-boat, which had caused damage, filed a libel in limitation of liability but surrendered only the barge, the court, on application, issued its process and seized the towboat also.

The Supreme Court has said that the purpose of the statute was to assimilate our law on this subject to that of the maritime countries of Europe; hence a reference to that law may often throw light upon a doubtful question of procedure or right.

§ 524. The Mode of Procedure. I.

In order to avail himself of the benefit of the statutes limiting liability, a shipowner is not obliged to institute a proceeding of his own. Indeed, where there is but one claim against him, it is not settled whether he may institute an independent proceeding, or must use the statute as a defence only, when sued on that one claim. In any event, he has the right to await a suit against him,²³ and to set up the statutory limitation of his liability as a defence to any recovery if his vessel and freight are lost, or as a partial defence if the claim

²⁰ *The Benefactor*, 103 U. S. 239, 244; *The Scotland*, 105 U. S. 24, 33.

²¹ *The Mendota*, 14 F. R. 358.

²² *Oregon R. R. and Nav. Co. v. Balfour*, 90 F. R. 295.

²³ *In re Meyer*, 74 F. R. 881.

exceeds the value of his vessel and her pending freight at the close of the voyage on which the claim arose.²⁴ If sued in a state court, he may set up the statutory limitation of liability as a defence or a partial defence in that court.²⁵

But if damage has occurred without his privity or knowledge, and if no suit or action has been brought, or if the suits or actions brought do not include all of the claims which may have arisen on the voyage, and the owner is in fear of a multitude of suits or actions on such claims, or even if there be but two suits against him, (and some courts say if only one suit), in which the claims exceed the value, at the end of the voyage, of the shipowner's interest in his vessel and her pending freight,²⁶ then the owner may institute a proceeding to limit his liability, if he is to be held liable, to the value of his interest in his vessel and her freight; and at the same time and in the same proceeding, he may also assert and obtain a complete exemption from all liability, if the facts which he alleges shall prove to be sufficient therefor. If no independent proceeding is taken by a shipowner under such circumstances, and he were simply to defend actions brought against him, he might be adjudged, in each of several successive actions, to pay each plaintiff's claim in full up to the limit of the value of his own interest in his vessel and her freight pending. In that case he could not have the limitation of his liability, or the later claims might be prevented from sharing in the limited fund.

§ 525. The Mode of Procedure. II.

The shipowner, therefore, who has suffered from any embezzlement, loss or destruction by the master and others of any property shipped on his vessel, or from any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred without his privity or knowledge, and who, therefore, deems himself entitled to the benefit of the statute, may file with the District Court for the proper district a libel or petition, setting forth the facts and circumstances under which the loss occurred, and on which he claims a limitation of liability; setting forth

²⁴ *The Scotland*, 105 U. S. 24; *The Manitoba*, 122 U. S. 97; *Miller v. O'Brien*, 168 U. S. 287; *The S. A. McCaullay*, 99 F. R. 302; *Gleason v. Duffy*, 116 F. R. 298; *The Ocean Spray*, 117 F. R. 971; *The City of Boston*, 159 F. R. 257.

²⁵ *Loughran v. McCaullay*, 186 Penn. St. 517, S. C. 65 Am. St. Rep. 872.

²⁶ In the case of *The Garden City*, 26 F. R. 766, it was held that it is not necessary to allege or prove that the claims exceed the value of the owners interest in the ship and the freight.

also the facts and circumstances on which he claims exemption from liability, if he claims complete exemption; and closing with an alternative prayer for complete exemption, or for limitation of his liability to the value of his interest in the vessel and her pending freight, if the court shall hold him liable. This libel, with the customary stipulation for costs, is filed with the clerk. Thereupon, as of course, the court will enter an order for an appraisal of the value of the petitioner's interest in the vessel and her pending freight, if an appraisal is asked for in the petition; or, equally of course, will enter an order that the petitioner transfer his interest to a trustee, whom the court names in the same order. After the appraisal is had, the petitioner must pay into court the amount of the appraised value, or must give a stipulation to pay the same into court when ordered. Or if a transfer to a trustee has been prayed for and ordered, the petitioner must transfer his interest in the vessel and her freight to the trustee appointed. After the petitioner has paid into court, or given stipulation for, the appraised value, or has transferred his interest to the trustee, he may obtain an order for the issuing, service, and publication of a monition, citing all persons who claim damages by reason of the loss, destruction, damage or injury, to appear and make proof of their respective claims before a commissioner named in the order, and within a period fixed by the monition, not less than three months from the issuing of the same. In the case of a surrender of the vessel, the monition must cite *all* persons having any claim upon the vessel, *i. e.*, persons having other claims than those arising out of the loss, destruction, or damage, as well as those who have claims arising in that particular way.²⁷ And at the same time, and in the same order, if desired, the court will issue its temporary injunction against the commencement of any new suits or actions against the petitioner or his vessel on causes of action arising out of the loss, damage or injury specified, and also restraining suits or actions already begun on such causes of action.

§ 526. The Mode of Procedure. III.

Any person who desires to claim damages by reason of the act, matter or thing, loss, damage or forfeiture set forth in the petition, must file with the appointed commissioner an affidavit or formal verified statement, setting forth the nature and amount of his loss. The filing of this claim with the commissioner gives the claimant the

²⁷ Dist. Rule 74.

standing to answer the libel and contest the right of the petitioner either to an exemption from liability or to a limitation of liability, or both.²⁸ If the petitioner seeks only to limit his liability and the claimant does not seek to dispute the right of the petitioner to such limitation, but is satisfied to accept his share of the fund surrendered, it is not necessary for him to answer the libel at all. If claimant seeks to contest the prayer of the petitioner either to an exemption from or a limitation of liability, the claimant must formally answer the libel, setting forth with particularity the reasons why he deems that the petitioner is not entitled to either or both kinds of relief sought.

On the return day of the monition, default of all persons who have not filed claims with the commissioner is noted, and if answers to the libel have been filed, the proceeding goes on the calendar for hearing in due course, as an ordinary litigated cause.

It will thus be seen that there may be two issues presented to the court for decision before the full proof of claims is taken up, *i. e.*, the issue of the owner's privity or knowledge or other reason for a limitation of his liability, and the issue of complete exemption, if that is claimed. The burden of proving the first issue is surely upon the petitioner. The burden of the second issue must fall upon the claimant and some fault on the part of the petitioner must be proved, as in the case of an ordinary libel charging liability.²⁹ Otherwise the burden would be on petitioner of proving a negative. In this respect the allegations of the answer stand as the averment of a libel, and the petitioner may either reply to them under Admiralty Rule 51, as amended, or have the averments of the petition thereon adopted as a reply for the purpose of the issue.³⁰

If the court holds the petitioner liable, but sustains the prayer of the petition on the issue of limitation, the proceeding goes to the commissioner under interlocutory decree, for full proof of the claimants' damages, and for hearing of questions of priority and apportionment among claimants, if the fund is insufficient to pay all in full. After hearing before the commissioner and report by him, and after exceptions to such report, if necessary, final decree is entered limiting the petitioner's liability, perpetually enjoining any further claims or suits against him, and distributing the fund surrendered among the claimants who have proved damages.

²⁸ Ad. Rule 56.

²⁹ *In re Davidson S. S. Co.*, 133 F. R. 411; *In re Starin*, 173 F. R. 721.

³⁰ *In re Davidson S. S. Co.*, 133 F. R. 411.

§ 527. The Mode of Procedure. IV.

But if the petitioner shall fail to bring himself within the provisions of the statute, and the court adjudges that he is not entitled to a limitation of his liability, the petition for limitation may perhaps be dismissed, the injunction against the prosecution or commencement of other suits be vacated, and the petitioner be open to attack in any appropriate action, as is any defendant on any cause of action against him. It is a question yet to be decided by supreme authority, whether the court, on refusal to a petitioner of exemption from liability or of the right to a limitation of his liability, may in the same proceeding, enter judgment against him for the full amount of the claims proved against him before the commissioner. And yet, if this cannot be done, the result might be a practical denial of justice to the damage claimants. For a petitioner may file his libel, claiming exemption and a limitation under the statute, and litigate his right to such limitation for years, meantime enjoining all proceedings against him. If, at the end of that period his right to exemption and to limitation is denied, and the court notwithstanding has power only to dismiss the petition, it might well be that the lapse of time, with its necessary loss or dispersal of witnesses, would prevent the claimants from again proving, in other forums, claims which were good and entirely capable of proof at the time when they were enjoined by the limitation proceeding, or which were actually proven in the limitation proceeding, but could not be again proved in another court. It seems but common equity, therefore, when a petitioner, choosing, within certain limits, his own forum, enjoins all other suits or actions, brings such claimants into his own proceeding and submits his rights to the court, that that court, if it refuses his prayer for exemption or limitation, shall have power to go further and decree affirmatively against him in the full amount of the damages which have been proved against him in his own proceeding, before the commissioner whom he himself has asked to have appointed to receive those very claims. Something of the kind was done in the matter of *The San Rafael*.³¹ There the *San Rafael* and the *Sausalito*, vessels belonging to the same owner, were in collision, and damages resulted. The owner filed its petition for a limitation, and surrendered the *San Rafael* only, and the District Court sustained the petition. Meantime, certain damage claimants had attacked the *Sausalito* and had secured judgments. The whole matter was appealed, and the Circuit Court of Appeals for the Ninth Circuit, holding that both

³¹ *The San Rafael*, 141 F. R. 270.

vessels should have been surrendered, dismissed the petition of limitation, increased the awards of damages allowed in the other cases, and directed the District Court to enter decrees against the petitioner in such increased amounts of damages. It seems that the court should have the same power in cases where separate decrees have not been entered, but where, in the same proceeding, the commissioner has taken proof and ascertained the actual damages of the claimants. In *The Garden City*,³² the court held that the petitioner had not complied with certain statutory requirements as to protection against fire, and in the limitation proceeding, brought by the owner of the *Garden City*, awarded claimants their full damages. But in that proceeding the claims did not equal the appraised value, so that the case is not strictly in point.

§ 528. The Court.

The proceeding of a shipowner, in limitation of his liability, is to be taken in the District Court, sitting in admiralty. In *Elwell v. Geibei*,³³ the complainant sought the aid of the Circuit Court, sitting in equity, for the relief given by the statute. But that court held that it was not the proper forum in which to obtain the relief asked for. In *The Mary Lord*,³⁴ a vessel was held liable in the District Court, and after appeal to the Circuit Court, and affirmance, the shipowner filed in the latter court his petition of limitation; it was dismissed, the court holding that the petition should have been filed in the District Court. Admiralty Rule 58 provides that the rules and regulations governing causes in limitation of liability shall apply to the Circuit Courts of the United States, where such causes are or shall be pending in said Courts on appeal from the District Court. But, inasmuch as, since the promulgation of that rule in 1881, the Circuit Courts of Appeal have been established and causes are no longer appealed to the Circuit Courts, the rule has lost all force. In the cases, spoken of heretofore,³⁵ where the District Court is not available, owing to the death or disability of the district judge, the proceeding could no doubt be taken in the Circuit Court; but only in such rare instances.

³² *The Garden City*, 26 F. R. 766.

³³ *Elwell v. Geibei*, 33 F. R. 71, a proceeding in equity, wrongly reported as in admiralty. *Goodrich Trans. Co. v. Gagnon*, 36 F. R. 123.

³⁴ *The Mary Lord*, 31 F. R. 416.

³⁵ *Ante*, § 253.

§ 529. The Proper District. I.

The Admiralty Rules governing proceedings in limitation of liability were promulgated in 1872 (13 Wall. XII, *et seq.*). Rule 57, as then put forth, provided only that the libel should be filed and the proceedings had in the District Court of the United States in which the vessel might be libeled, or if not libeled, then in the District Court for any district in which the owner might be sued in that behalf.³⁶ The rule apparently intended to provide only for cases in which action had been taken against the ship or her owner, and did not provide for an independent proceeding on the part of the latter. In 1889 the Supreme Court amended Rule 57 (130 U. S. 705), by adding the provision that, where the ship has not been libeled, and suit has not been commenced against her owner, or has been commenced in a district other than that in which the vessel may be, the proceedings may be had in the District Court of the district in which the vessel or her proceeds may be, and where it or they may be subject to the control of such court for the purposes of the case.

§ 530. The Proper District. II.

The rules of the Supreme Court do not seem to be exclusive, for the court has held that the intention of the rules was "to facilitate the proceedings of owners of vessels,"³⁷ and not to restrict them; and also, in *The City of Norwich*,³⁸ we find a proceeding, approved by the Supreme Court, in a case not specifically provided for in the rules.³⁹ In the light of the rules, and of the above-mentioned case, of the *City of Norwich*, we find provision made for four different situations:

1. *Where the vessel has been already libeled (and this, of course, means libeled and seized and in the control of the court), but her owner has not been sued.* In this case the petition of limitation must be filed in the District Court for the district in which the vessel is already in custody.

2. *Where the vessel has not been libeled but her owner has been sued.* In this case the petition of limitation may be filed either in the district in which the owner has been sued,⁴⁰ or in the district in which the

³⁶ See *ex parte Slayton*, 105 U. S. 451; *Ex parte Phoenix Ins. Co.*, 118 U. S. 610.

³⁷ *The Benefactor*, 103 U. S., at p. 244.

³⁸ *The City of Norwich*, 118 U. S. 468.

³⁹ See (4), *infra*.

⁴⁰ *Gleason v. Duffy*, 116 F. R. 298.

vessel may be. If the owner has been sued in several districts, he may file his petition in any one of them.

3. *Where the vessel has not been libeled and her owner has not been sued.* In this case the petition of limitation must be filed in the district in which the vessel may be.⁴¹

4. *Where the vessel has been libeled and her owner has also been sued.* In this case the petition of limitation should be filed in the district in which the vessel has been libeled, and not in the district where the owner has been sued, if the two districts are different.⁴²

In each of the above cases, where the vessel has been sold, her proceeds represent her for the purposes of the foregoing rules. There is an exception to or variant of the third case found in the matter of the *Job M. Leonard*,⁴³ in which the vessel had been totally lost and her owners had not been sued. In this case the owners filed their petition in a district in which none of them resided, but in which they were prosecuting a suit against the owners of the vessel which had caused the loss, and it was held that the petition was properly filed.

The control of the *res* by the court is what the rules manifestly intend,⁴⁴ and, if there be no *res*, then the control of the owner; in other words, it must be a court which would have original jurisdiction in admiralty of a suit *in rem* or *in personam* to recover for the loss or damage involved.⁴⁵

The words in Rule 57 that the petition may be filed in "the District Court for any district in which the said owner or owners *may be* sued in that behalf" are broad enough to include any district in which it is possible to bring suit against the owner, i. e., any district in which he may be personally served, or compelled to appear by attachment, and hence that the owner might file the libel in any district in which he is personally present, or in any district in which he has property which might be attached. But the latter part of the rule precludes such meaning, since it specifically provides the district in which an owner who has not been sued must file his petition, i. e., the district where the vessel may be, and the construction of the whole rule

⁴¹ *Ex parte Slayton*, 105 U. S. 454; *In re Morrison*, 147 U. S. 14; *The John Bramall*, 10 Ben. 495; *The Alpena*, 8 F. R. 280; *Black v. R. R. Co.*, 39 F. R. 565; *The John K. Gilkinson*, 150 F. R. 454 and 156 F. R. 868.

⁴² *The City of Norwich*, 118 U. S. 468; *The Luckenbach*, 26 F. R. 870.

⁴³ *In re Leonard*, 14 F. R. 53.

⁴⁴ *Ex parte Slayton*, 105 U. S. 454.

⁴⁵ *Ex parte Phoenix Ins. Co.*, 118 U. S. 610.

seems to require that the words "may be sued" in the rule are equivalent to the words, "may have been sued."

§ 531. The Libel or Petition. I.

This is the pleading, the filing of which institutes the proceeding in limitation of the shipowner's liability, and it is necessary that it be carefully drawn. There is usually the alternative object to be prayed for, of complete exemption from liability, or partial exemption to the extent of the value of the owner's interest in the vessel and her pending freight, and, in the Southern and Eastern Districts of New York, the rules require much more particularity of statement than in an ordinary libel. The omission to allege a jurisdictional fact may afterwards be amended, but it may make necessary the issuing of an alias monition.⁴⁶ The petition is addressed to the court in the form of an ordinary libel; it describes itself as the petition of the shipowner, naming him and his vessel, and it describes the proceeding as a cause of limitation of liability, civil and maritime. It sets forth the facts to show that it is properly brought in the particular district. It then, in proper articles, describes the accident, or the circumstances out of which the loss, damage or injury arose, and which tend to show that the petitioner is not liable therefor in any event;⁴⁷ as, for instance, in a collision case, the facts which show that the fault therefor lies with the other vessel. Thus far, except that it is entitled as a general petition, and not as a complaint against a specific defendant, its allegations correspond with those of a libel founded on the same accident or circumstances. It next should aver that the accident or the circumstances out of which the loss occurred, were done, occasioned or incurred without the privity or knowledge of the petitioner. And then should follow the allegations of certain facts, required to be set forth in such a petition by the rules of the Southern and Eastern Districts of New York, and the setting forth of which, in other districts where those rules do not prevail, will certainly assist the court in its disposition of the proceeding. Those facts are as follows, quoting from such rules, so far as they refer to the allegations of the libel:

RULE 73.

Petitions or libels to limit liability must state:

(1) The facts showing that the application is properly made in this district. (Already referred to as required to be set forth.)

⁴⁶ *In re Long Id. N. S. Co.*, 5 F. R. 599 (*The Seawanaka*).

⁴⁷ *The Trader*, 129 F. R. 462; *The Sacramento*, 131 F. R. 373.

(2) The voyage on which the demands sought to be limited arose, with the date and place of its termination ; the amount of all demands including all unsatisfied liens or claims of liens, on contract or on tort, arising on that voyage, so far as known to the petitioners, and what suits, if any, are pending thereon ; whether the vessel was damaged, lost or abandoned, and if so, when and where ; the value of the vessel at the close of the voyage or in case of wreck, the value of her wreckage strippings or proceeds, if any, as nearly as the petitioners can ascertain, and where and in whose possession they are ; also the amount of any pending freight, recovered or recoverable. If any of the above particulars are not fully known to the petitioner, a statement of such particulars according to the best knowledge, information and belief of the petitioner, shall be sufficient.

RULE 74.

If a *surrender* of the vessel is offered to be made to a trustee, the libel or petition must further show whether there is any prior paramount lien on the vessel, and whether she has made any, and if so, what voyage or trip since the voyage or trip on which the claims sought to be limited arose, and any existing lien or liens, maritime or domestic, arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known ; also the special facts on which the right to surrender the vessel is claimed, notwithstanding such subsequent trip or voyage, and whether the vessel sustained any injury upon, or by reason of such subsequent voyage or trip. (Remainder of rule omitted here.)

RULE 75.

If, instead of a surrender of the vessel, an appraisement thereof be sought for the purpose of giving a *stipulation for value*, the libel or petition must state the names and addresses of the principal creditors and lienors, whether on contract or in tort, upon the voyage on which the claims are sought to be limited, and the amounts of their claims, so far as they are known to the petitioner, and the attorneys or proctors in any suits thereon ; or if such creditors or lienors be very numerous, then a sufficient number of them properly to represent all in the appraisement. (Remainder of rule omitted here.)

§ 532. The Libel or Petition. II—Limitation only—Admission of Liability—Offer to Surrender.

The above section describes the form of a libel where the petitioner not only seeks to limit his liability to the value of his interest in the vessel and her freight, but also seeks to have the court decree that he is not liable to any extent for the results of the accident described. If the petitioner admits liability, and seeks only to limit the same,

the petition need only set forth the facts on which limitation is claimed, and will omit facts looking toward the claim of total exemption. But, in either event, and even where a limitation alone is sought, it is not necessary to admit a liability.⁴⁸ The petition should contain an offer to surrender to a trustee the petitioner's interest in the vessel and her freight pending, or, if that is not desired or cannot be done, there should be an offer to pay into court the appraised value of the same, or to give a stipulation to pay the same into court when ordered; or it should be alleged that the ship is totally lost and that there is no freight pending.

§ 533. The Libel or Petition. III—Number of Claims.

Where there are several claims against the vessel or her owner, arising out of the accident or circumstances against whose result the limitation is sought, such claims should be set forth with particularity, and if suits or actions are threatened or the petitioner is in fear of such adverse proceedings, those facts should be alleged.⁴⁹ As to whether it is necessary to allege, or rather, as to whether it is a jurisdictional fact that there should be more than one claim against the vessel or her owner, there is some variance in the lower courts, and the Supreme Court is as yet silent. It has been held that the right to a limitation of liability may be set up as a defence, even in an action at law and not necessarily as a claim in an independent proceeding.⁵⁰

The Southern District of New York, in the cases of *The Rosa*⁵¹ and *The Eureka No. 32*,⁵² and the District Court for the District of South Carolina in *The Lotta*,⁵³ were of the opinion that when limitation proceedings were taken in cases where there was but a single claim, the purpose of the petitioner was evident, to thus avoid a trial by jury of such claim, and that, as the common law was competent to give the relief of limitation asked for, the limitation of liability statute could not be used to deprive a suitor of his "right of a com-

⁴⁸ *In re The Annie Faxon*, 66 F. R. 575; *In re Piper, etc., Co.*, 86 F. R. 670.

⁴⁹ *The M. Moran*, 107 F. R. 526; *The Eureka, No. 32*, 108 F. R. 672.

⁵⁰ *The Scotland*, 105 U. S. 24; *Levinson v. Oceanic S. N. Co.*, Fed. Cas. 8292.

⁵¹ *The Rosa*, 53 F. R. 132.

⁵² *The Eureka No. 32*, 108 F. R. 672.

⁵³ *The Lotta*, 150 F. R. 219.

mon law remedy, when the common law is competent to give it."⁵⁴ For these reasons those courts held that the proceeding could not be had when there was only one claim against the shipowner, even if that claim arose out of an accident which had occurred without the privity or knowledge of the petitioner. The only appellate court which has passed on the question, i. e., the Circuit Court of Appeals for the First Circuit, in *Quinlan v. Pew*,⁵⁵ disapproved of the holding of the *Rosa*, and itself held that the proceeding could be had even if there existed but one claim. A similar holding was had by the District Court for the Eastern District of Pennsylvania in the matter of *The S. A. McCaullay*.⁵⁶ Several other cases in the Eastern and Southern Districts of New York show that the right to an independent proceeding in limitation was allowed when there existed but one claim, although it does not appear that objection to the proceeding was made in those cases on that ground.⁵⁷ And in *The Hoffmans* ⁵⁸ the point was again raised, and the Southern District of New York reversed its holdings in the *Rosa* and the *Eureka No. 32*. The weight of authority, therefore, at the present time, favors the latter construction of the statute, and unless the Supreme Court shall hereafter hold otherwise, it may be asserted generally, as the law, that a shipowner in a proper case is entitled to limit his liability for the consequences of any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred without his privity or knowledge, regardless of the number of claims arising thereon.

§ 534. The Libel or Petition. IV—Amount of Claims.

It is a proper allegation to insert in the petition that the amount of the claims against the owner or his vessel is greater than the amount of the value of the owner's interest in the vessel and her freight pending; but the allegation is not essential to the validity of the petition.⁵⁹ Where the claims are in fact greater than the value of the owner's interest, and he files his petition alleging that fact, jurisdiction will

⁵⁴ Rev. Stat. § 563, subd. 8.

⁵⁵ *Quinlan v. Pew*, 56 F. R. 111.

⁵⁶ *The S. A. McCaullay*, 99 F. R. 302.

⁵⁷ *In re Starin*, 124 F. R. 101; *The Tommy*, 142 F. R. 1034 and 151 F. R. 570; *The Southside*, 155 F. R. 364; *The John K. Gilkinson*, 156 F. R. 868; *The W. A. Sherman*, 167 F. R. 976.

⁵⁸ *The Hoffmans*, 171 F. R. 455.

⁵⁹ *The Garden City*, 26 F. R. 766.

attach and the damage claimants cannot thereafter divest the court of its jurisdiction by reducing their claims to a sum which is less than such value.⁶⁰

§ 535. Privity or Knowledge. I.

Section 4283 of the Revised Statutes provides that the liability of a shipowner for any act, matter or thing, loss, damage or forfeiture, done, occasioned or incurred without the privity or knowledge of such owner, shall not exceed the value of the interest of such owner in the vessel and her freight then pending. The "privity or knowledge" of the owner means some personal concurrence of the owner in the accident or the circumstances which created the loss, or some fault or negligence on the part of the owner himself or in which he has personally participated.⁶¹ In *The Republic*,⁶² it is said that it was the intention of Congress to relieve the shipowner from the consequences of all imputable culpability by reason of the acts of his agents or servants, or of third persons, but not to curtail his responsibility for his own wilful or negligent acts. In *The Colima*,⁶³ the court said that the knowledge and privity that excludes the operation of the statute must be in a measure actual and not merely constructive; that is, actual through the owner's knowledge, or authorization, or immediate control of the wrongful acts or conditions, or through some kind of personal participation in them.⁶⁴ In cases of corporate ownership, the privity or knowledge must be that of the managing officers of the corporation;⁶⁵ though where a steamship company placed an agent in distant waters as its representative there, it was held that his privity and knowledge was the privity and knowledge of the company, though such agent was not an officer, but only a servant.⁶⁶ Should the claims proved not equal the surrendered value, the question of the owner's privity or knowledge becomes unimportant.⁶⁷

⁶⁰ *The Tolchester*, 42 F. R. 180; *The John K. Gilkinson*, 150 F. R. 454.

⁶¹ *Lord v. Goodall N. & P. S. S. Co.*, 4 Sawy. 292; *The Captain Jack*, 169 F. R. 455.

⁶² *The Republic*, 61 F. R. 109.

⁶³ *The Colima*, 82 F. R. 665.

⁶⁴ See also *The Anna*, 47 F. R. 525; *Quinlan v. Pew*, 56 F. R. 111; *In re The Annie Faxon*, 66 F. R. 575; *The George W. Robey*, 111 F. R. 601.

⁶⁵ *Craig v. Continental Ins. Co.*, 141 U. S. 638; *In re Eastern Dredging Co.*, 159 F. R. 541; *Oregon R. L. Co. v. Portland & A. S. S. Co.*, 162 F. R. 912; *The Captain Jack*, 169 F. R. 455.

⁶⁶ *Parsons v. Empire Trans. Co.*, 111 F. R. 202.

⁶⁷ *In re Humboldt L. & M. A.*, 60 F. R. 428.

§ 536. Privity or Knowledge. II—Unseaworthiness—Inspection of Vessel.

If the damage and loss have occurred through the defective or unseaworthy condition of the vessel, the owner may limit his liability, notwithstanding the general warranty of unseaworthiness always implied on the part of a shipowner, provided such defective condition did not arise or continue with his privity and knowledge.⁶⁸ In the case of a corporation owner, or the personal owner of many vessels, the neglect to inspect the vessel or to properly provide for a system of inspection, ordinarily would create such privity with a disaster arising from a defective condition as would prevent the limitation,⁶⁹ and where the owner has delegated power to a shipmaster or other servant, and has relied upon him to see to it that the vessel was properly equipped or otherwise fitted for the contemplated service, the burden of proving the competency of such servant for the work entrusted to him rests upon the owner, and must be shown affirmatively before the owner can limit his liability.⁷⁰ But if the owner has selected a proper person to perform such duties, and such person has neglected his duties, and the owner is unaware of the neglect or of the defective condition arising therefrom, he may limit his liability.⁷¹

§ 537. Privity or Knowledge. III—Unseaworthiness—Liability to Passengers.

An extension of the shipowner's general liability so far as passengers are concerned, is found in § 4493 of the Revised Statutes, which provides that a shipowner, and his vessel and master shall pay damages to a passenger who is injured by explosion, fire, collision or other cause, where the damage happens through any neglect or failure to comply with the provisions of the laws relating to the inspection of steam vessels, or through known defects or imperfections of the steaming apparatus or the hull. The expression "known" defects is prob-

⁶⁸ *In re Meyers Ex. & Nav. Co.*, 57 F. R. 240, *aff'd as The Republic*, 61 F. R. 109; *Quinlan v. Pew*, 56 F. R. 111; *The Annie Faxon*, 66 F. R. 575, *aff'd* 75 F. R. 312; *The Harry Hudson Smith*, 142 F. R. 724; *The Tommy*, 142 F. R. 1034; *Oregon R. L. Co. v. Portland & A. S. S. Co.*, 162 F. R. 912; *Braker v. F. W. Jarvis Co.*, 166 F. R. 937; see *The Norge*, 156 F. R. 845.

⁶⁹ *The Annie Faxon*, 66 F. R. 575, *aff'd* 75 F. R. 312; *Van Eyken v. Erie Ry. Co.*, 117 F. R. 712; *Oregon R. L. Co. v. Portland & A. S. S. Co.*, 162 F. R. 912; *The Captain Jack*, 169 F. R. 455.

⁷⁰ *McGill v. Michigan S. S. Co.*, 144 F. R. 788.

⁷¹ *Quinlan v. Pew*, 56 F. R. 111; *Van Eyken v. Erie Ry. Co.*, 117 F. R. 712; *The Tommy*, 151 F. R. 570; *The Warksworth*, 9 P. D. 145.

ably no broader than the term "privity or knowledge" in the earlier section, but the part of the statute relating to the neglect to comply with the inspection laws is somewhat broader. In *The Annie Faxon*,⁷² the court held that the owner's failure to comply with the inspection laws could be invoked against his petition for limitation, without reference to whether such failure to inspect occurred with or without his privity and knowledge.⁷³ In the proceeding entitled *In re Pacific Mail S. S. Co.*⁷⁴ the court held that the steamship *City of Rio de Janeiro*, was insufficiently manned, and hence, in violation of Rev. Stat., § 4463, by reason of employing only Chinese sailors, who were unable to understand and hence execute the orders which were made imperative by the disaster out of which the proceeding arose.

§ 538. Privity or Knowledge. IV—Act of 1884.

On June 26, 1884, Congress passed an Act (23 Stat, at p. 57, § 18; 1 Supp. Rev. Stat. 2d Ed, p. 440), which provided that the individual liabilities of a shipowner shall be limited to the proportion of any or all debts and liabilities that his individual share of the vessel bears to the whole; and the aggregate liabilities of all the owners of a vessel on account of the same shall not exceed the value of such vessel and freight pending. This Act, on its face, would seem to be broad enough to restrict the liability of a shipowner to his interest in the vessel and freight for the consequences of any happening, whether done with his knowledge or not, or with or without his personal negligence, and even to restrict his liability on his personal contracts. Such has not, however, been the construction placed upon the Act by the courts. They have held that it is to be construed in connection with and as an amplification of the limitation of liability Act of 1851 (Rev. Stat. § 4283, *et seq.*), and that its provisions apply only to the shipowner's liability, "on account of the vessel," i. e., that liability which is imposed upon him by reason of his ownership in the vessel, and in regard to the creation of which he had no personal privity or knowledge; that it does not extend to the personal contracts of the shipowner or to losses arising from his personal negligence; and that it is still necessary to show that the liability, sought to be limited under the provisions of this Act, occurred without the privity or knowledge of the shipowner.⁷⁵

⁷² *The Annie Faxon*, 66 F. R. 575, *aff'd* 75 F. R. 312.

⁷³ *The Annie Faxon*, *supra*; *The Longfellow*, 104 F. R. 360.

⁷⁴ *In re Pacific Mail S. S. Co.*, 130 F. R. 76, reversing S. C. 126 F. R. 1020.

⁷⁵ *The Amos D. Carver*, 35 F. R. 665; *McPhail v. Williams*, 41 F. R. 61;

§ 539. The Prayer of the Petition.

The prayer of the petition must vary according to the circumstances of the case:

1. If no proceeding has been taken against the vessel or her owner, the prayer should be for the appointment of a trustee to whom the petitioner may convey the vessel and freight, or for the appraisement of the vessel and freight in order to the giving of a stipulation for the appraised value or its payment into court, and for a monition to all persons having claims, naming them as far as possible, and citing them to appear and answer, and for an injunction against the prosecution of suits against the vessel or her owner, and for a decree limiting the liability of the owner or exempting him from all liability, as the case may be. If for any reason it should be desirable to have the vessel seized by the marshal under process against her, such process should be prayed for.⁷⁶

2. If the vessel, or her proceeds, is in custody or has been bonded in another suit, the prayer should be for an appraisal of the vessel and her pending freight, and for an order for the release of the vessel and freight, on the giving of the stipulation in the limited liability proceeding, if that be desired, and for a perpetual stay in the other proceeding, with prayers for process, injunction and final decree as above.

§ 540. Stipulation for Costs.

It is the practice in the New York Districts to give, on filing the petition, a stipulation for costs in the sum of \$250, as in cases *in rem*.

§ 541. The Surrender or Appraisement. I.

If the vessel and freight are in a condition to be surrendered by the petitioner, and it is proposed to surrender them, they must be so surrendered to the court, by the transfer of them to the trustee, or, where the proceeding is not instituted by the owner, as in the case of *In re Morrison*^{76a}, by their seizure by the marshal under process issued against them. Such surrender may be made, although appraisal proceedings have been had under the alternative provision of Admiralty Rule 54, at least before the court has made its order

Gokey v. Fort, 44 F. R. 364; The Giles Loring, 48 F. R. 463; Douse v. Sargent, 48 F. R. 695; In re Meyer, 74 F. R. 881; Rudolph v. Brown, 137 F. R. 106; Great Lakes T. Co. v. Mill Tr. Co., 155 F. R. 11.

⁷⁶ The John Bramall, 10 Ben. 495.

^{76a} In re Morrison, 147 U. S. 14.

for payment of the appraised value into court, or the giving of a stipulation.⁷⁷

In the appointment of such trustee the national character of the ship should be considered, and if possible the nationality of the ship and the trustee should be the same, in order to avoid question as to the title which the trustee can convey when he sells.

The words, "transfer his interest to a trustee," in the statute must be held to include not only the execution of the instrument but the delivery of the property under it. For it might easily be that the mere execution of the instrument of conveyance would furnish nothing to the limitation proceeding; as, for instance, in case the vessel were at the time in custody of a court in a suit against the owner for some personal debt which was not a liability to be included in the limitation proceeding.

The Supreme Court in the matter of *La Bourgogne*,⁷⁸ held that where there was an honest doubt on the part of the petitioner as to whether a certain asset should be surrendered or not, the failure to pay over the same to the trustee in advance does not necessarily deprive the petitioner of his right to a limitation. And in fact, during the ten years of litigation, which resulted in the above decision, and until after that decision, the petitioner did not pay over to the trustee the prepaid freight and passage money, which, at the outset of the litigation, it admitted was in its possession. The holding is a dangerous one; for possession of the *res* by the court is considered of primary importance to the validity of the proceeding. Admiralty Rule 54 states specifically that "upon compliance with the order" which bids the petitioner transfer or give security for his interest in the vessel and freight, the monition and injunction shall issue; hence it is a fair conclusion that they cannot lawfully issue until compliance with the order and until transfer to the trustee, or the giving of security. Moreover, who is to know whether the "doubt" which actuates the petitioner in withholding an asset is an honest doubt or not? On the whole, it is far safer for a petitioner who has an honest doubt as to whether a particular asset should be surrendered or not, to surrender it, perhaps under protest, and then express his honest doubt to the court, and ask for the return of such asset. If it need not have been surrendered, he will get it back, and will not have been hurt by its temporary surrender; while if it is properly a part of the value to be

⁷⁷ *Ohio Transp. Co. v. Davidson S. S. Co.*, 148 F. R. 185.

⁷⁸ *La Bourgogne*, 210 U. S. 95.

surrendered, the petitioner will not be in the position of having failed to surrender the entire *res*, a position which has more than once been held to deprive a petitioner of his right to a limitation.⁷⁹

If a surrender cannot be had or is not desired, there may be had an equivalent proceeding by appraisement and stipulation, and in that case an order is made by the court, referring it to a commissioner of the court to appraise the value of the interest of the petitioner in the vessel and freight pending, or ordering such appraisal in some other valid way.⁸⁰

A surrender of the vessel may be made, even though in a suit against her she may have been bonded for value, and has thereafter made voyages, provided her value be unimpaired at the time of the surrender.⁸¹

§ 542. The Surrender or Appraisement. II.

Where the petition asks for an appraisement, the court on application makes an order for such appraisement. It may join with this order an order for the payment into court of the amount of such value when appraised, or for the giving of a stipulation, with sureties, that such appraised value will be paid into court whenever such payment may be ordered. Or the order may be in the first place merely for the appraisal, postponing, till the appraisal has been completed, the order for the payment into court or the stipulation. In such case, at least before the latter order is entered, the petitioner may change his mind and surrender the vessel to a trustee.⁸²

As will be seen, it is provided in the rule that the monition, citing opposing parties to appear, shall issue when the court has obtained possession of the *res*, by reason of the money having been paid into court, or a stipulation having been given, or a trustee appointed and a transfer of the vessel to him ordered and made; while the proceedings for the appraisal in order to fix the amount to be paid into court

⁷⁹ The San Rafael, 141 F. R. 270; The Columbia, 73 F. R. 226.

⁸⁰ In re Morrison, 147 U. S. 14.

⁸¹ Dist. Rule 74; The Rose Culkin, 52 F. R. 328. Where both a towing and towed vessel belong to the same owner, and accident happens through the negligence of either, the owner must surrender both vessels in order to obtain a limitation; Short v. The Columbia, 73 F. R. 226. And similarly, when the proceeding grows out of a collision between two vessels, both belonging to the same owner and both in fault, the petition will be dismissed if only one is surrendered; The San Rafael, 141 F. R. 270.

⁸² Ohio Transp. Co. v. Davidson, S. S. Co., 148 F. R. 185.

or the amount of the stipulation (proceedings in which the parties to be cited are vitally interested), are preliminary to the payment into court or the giving of the stipulation.

The only provision of the 54th Rule bearing on this point is that the court is to have "caused due appraisement to be had." This word "due" is flexible, and leaves much to the discretion of the court. In the case of *The H. F. Dimock*,⁸³ the owner filed a petition in the District Court of Massachusetts, the vessel being in Boston, and on such petition the court appointed appraisers, who appraised the vessel without actual notice to any one, according to the regular practice of that court. And the owner having given a stipulation in the appraised value, the injunction was issued. A claimant thereafter filed a libel against the vessel in another district, alleging that the Massachusetts proceeding was insufficient to give that court jurisdiction, inasmuch as "due" appraisement had not been had, because no notice of it had been given to claimants; but the Supreme Court sustained the jurisdiction of the Massachusetts Court.⁸⁴

In the New York districts the more common practise is to order it referred to a commissioner to make the appraisal, and to order notice of the reference to be given to any parties who have claims and who are within the jurisdiction of the court.⁸⁵ For this purpose, the petitioner should furnish to the court a statement of all such parties, as far as known, in order that they may be notified. But it might easily be that no such parties are within the jurisdiction, and that the appraisal must be made without notice to parties who are to be vitally affected by it. In that case, it behooves the court, and the petitioner also, to see to it that the appraisement is "due." See *ante* § 373. If any party, who has had no notice of the appraisement, but who has come in when notified by the monition, finds cause to believe that the property has not been rightly appraised, and shows it to the court, it is doubtless within the power of the court to order a new appraisement, and to order a larger stipulation to be furnished by the petitioner.

§ 543. The Surrender or Appraisement. III—What is to be Surrendered or Appraised.

The petitioner, either by surrender to the trustee, or by deposit in court of the appraised value or its equivalent in the form of a stipulation

⁸³ *The H. F. Dimock*, 52 F. R. 598.

⁸⁴ *In re Morrison*, 147 U. S. 14.

⁸⁵ Dist. Rule 75.

must put the court in possession or control of the amount of the value of his interest in the vessel, and her pending freight. The value of petitioner's interest in the vessel is the value of that interest taken as of the period at the end of the voyage on which the damage arose, against which petitioner seeks to limit his liability.⁸⁶ Hence, when a vessel has met with a disaster at sea and limps into port with the assistance of a salvor and so ends her voyage, the value to be surrendered or appraised is not her value as she originally set sail, nor her value as she was on the day of the disaster, either before or after it has happened, but her value as she arrives in her damaged condition in the port of safety, and after deducting from such value the award to the salvor who has brought her into port. Or where a vessel has been sunk in collision, but has afterwards been raised and repaired, her surrender value is her value when raised, less than expense of raising her.⁸⁷ If by reason of her disaster, she has a claim against another vessel, through whose negligence, as she alleges, the disaster was occasioned, that claim against such other vessel must be surrendered as part of the owner's interest in the vessel.⁸⁸ Where more than one vessel belonging to the same owner is involved in the disaster, a surrender of but one vessel is not a complete surrender.⁸⁹ The appurtenances of a peculiar vessel, e. g., the traveling derrick of a scow, essential to the service on which she was engaged at the time of the happening of the accident, are a part of the value to be surrendered or appraised.⁹⁰ And the outfit of a whaler is to be so surrendered.⁹¹ The security for the value of a vessel, given in a suit against her before the limitation proceeding is begun,⁹² or the amount of the proceeds of a vessel when sold in another proceeding,⁹³ do not necessarily fix the value of the owner's interest for the purpose of the limitation of liability proceeding. Where a vessel is appraised at some distance of time after the accident, de-

⁸⁶ *The City of Norwich*, 118 U. S. 468; *The Great Western*, 118 U. S. 520; *The Doris Eckhoff*, 30 F. R. 140; *The Giles Loring*, 48 F. R. 463; *In re Meyer*, 74 F. R. 881; *The Geo. L. Garlick*, 107 F. R. 542; *Pacific Coast Co. v. Reynolds*, 114 F. R. 877.

⁸⁷ *Petition of N. & N. Y. Trans. Co.*, 8 Ben. 312.

⁸⁸ *O'Brien v. Miller*, 168 U. S. 287.

⁸⁹ *Short v. The Columbia*, 73 F. R. 226; *Hall v. North P. C. R. Co.*, 134 F. R. 309; *The San Rafael*, 134 F. R. 749, both affirmed on this point in *The San Rafael*, 141 F. R. 270; *The Captain Jack*, 169 F. R. 455.

⁹⁰ *The Buffalo*, 148 F. R. 331, *aff'd* 154 F. R. 815.

⁹¹ *The Helen Mar*, 2 Lowell, 40, 49.

⁹² *The Benefactor*, 103 U. S. 239; *Petition of the Norwich Co.*, 8 Ben. 312; *The Doris Eckhoff*, 30 F. R. 140.

⁹³ *The U. S. Grant*, 45 F. R. 642.

ductions from her value at the time of the appraisal by reason of additions since the accident should be made.⁹⁴

§ 544. The Surrender or Appraisement. IV—Freight Pending.

The shipowner who seeks to limit his liability is also obliged to surrender to the trustee or to include in his appraisal the pending freight for the voyage on which the disaster occurred. This means the freight moneys collected or collectible, the prepaid freight which under the terms of his agreement with his shippers is not to be returned in case the voyage is not completed.⁹⁵ And it has been held that this means the gross freight collected or collectible, without deduction for the expenses of earning it.⁹⁶ It also includes passage money for the transportation of passengers, unless the passage ticket provides for a return of the money in case the contract of transportation is not fulfilled.⁹⁷ Demurrage due under a charter party,⁹⁸ the earnings of a fishing vessel for the season,⁹⁹ and money due a vessel under a contract for raising another vessel which had been sunk,¹⁰⁰ have been held to be freight pending. But there is no freight pending on a whaling voyage,¹⁰¹ and salvage money is not freight pending;¹⁰² nor is towage compensation.¹⁰³

§ 545. Prior Liens on the Vessel. I.

Apart from the freight, the particular *res* which the court holds for distribution, if liable, among the various damage claimants, is the interest of the owner in the vessel. In the case of an appraisement the value of that particular interest can be ascertained through evidence, and either paid into court or a stipulation accepted therefor

⁹⁴ *The Captain Jack*, 162 F. R. 808.

⁹⁵ *The Main v. Williams*, 152 U. S. 122; *Pacific Coast Co. v. Reynolds*, 114 F. R. 877. The freight to be surrendered is the freight of the particular vessel on account of which the limitation of liability is sought, and when through cargo is being conveyed at a through freight rate, only the portion thereof applicable to the transportation in the particular vessel is the "freight pending" of the statute, even though another vessel belonging to the petitioner is employed in the through carriage. *Ralli v. New York & T. S. S. Co.*, 154 F. R. 286.

⁹⁶ *The Jane Grey*, 99 F. R. 582.

⁹⁷ *The Main v. Williams*, 152 U. S. 122.

⁹⁸ *The Giles Loring*, 48 F. R. 463.

⁹⁹ *Whitcomb v. Emerson*, 50 F. R. 128.

¹⁰⁰ *The Captain Jack*, 162 F. R. 808.

¹⁰¹ *The Helen Mar*, 2 Lowell, 40, 49.

¹⁰² *In re Meyer*, 74 F. R. 881.

¹⁰³ *Pet. of Owners of The Young America, etc.*, E. D. of N. Y. 1880.

that it will be paid into court when ordered. And that appraised value must be the value of the ship, after deduction of the amount of paramount liens,¹⁰⁴ or additions subsequent to the accident.¹⁰⁵ But in the case of a surrender, the court, through its trustee, must accept not the exact *res* which is the subject of the limitation of liability proceeding, but the whole ship, or the ship partially damaged, or the wreck of the ship, or the few strippings which may remain and be brought into port after a marine disaster. Upon such ship there may be liens already existing from a previous voyage, and there may be liens even upon the strippings, since it is a familiar maxim of the admiralty that one lien at least, i. e., that for seaman's wages, clings to the last plank of the ship. The ship or her wreck, or her strippings or proceeds, is surrendered with the liens upon her or them, and it is the duty of the court, in its distribution of the *res* in such a proceeding, to take into account both the claims which have arisen out of the act, matter or thing, loss, damage or forfeiture which gave rise to the proceeding, and also other existing liens, and to protect such other liens so far as possible, as an admiralty court will always strive to do. It accomplishes this by refusing to grant the decree of limitation until such liens, if prior to the particular liens or claims of the limitation proceedings, have been paid off or secured.¹⁰⁶ The court may also, in case of a surrender, authorize the trustee to sell the vessel free and clear of all liens, which would thereby become transferred to the proceeds of sale, and take their place according to the rule of priorities.^{106a}

§ 546. Prior Liens on the Vessel. II.

Thus, a ship may meet with a collision in consequence of which she is towed to port by a salvor and a limitation proceeding there instituted by her owner. The salvor's lien would be paramount to the liens of the claimants for damage by the collision. On an appraisal the proper salvage award, if it could be ascertained, would be deducted from the general value as found, and the balance ordered to be paid into court. On a surrender, the court would, of course, receive the whole, but the salvage award would be first paid by the court out of the value of the surrendered ship, or would be secured to be paid by the owner before he could obtain the limitation decree. And so of

¹⁰⁴ *Gokey v. Fort*, 44 F. R. 364; *The U. S. Grant*, 45 F. R. 642.

¹⁰⁵ *The Captain Jack*, 162 F. R. 808.

¹⁰⁶ Dist. Rule 74.

^{106a} *The Mendota*, 14 F. R. 358.

other existing claims or liens which may all come into the limitation proceeding, if not secured outside of such proceeding by the owner, and participate in the fund derived from the sale of the surrendered vessel, if they can prove a priority or an equality; the whole matter depending upon the questions of priority of liens, the law of which has no place in this book. But, as a matter of practice simply, where a surrender is desired, the existence of prior paramount liens, if such exist, must be alleged in the petition for limitation; also the existence and nature and amounts of any liens arising on any voyage since the voyage on which the claims sought to be limited arose, with the names and addresses of the lienors, so far as known; so that all such lienors may be notified of the proceeding; the petition must also allege the special facts on which the right to surrender is claimed, notwithstanding the fact that the vessel has made a subsequent voyage, which special facts are ordinarily that petitioner, apart from the limitation proceeding, has paid or secured claims arising on such subsequent voyage, so that the vessel is surrendered with a value as of the end of the voyage on which the claims sought to be limited arose. And when an appraisement is sought, the petition must state the names and addresses of the principal creditors or lienors on the voyage under consideration, and the amounts of the claims, and the names of attorneys or proctors in any suits thereon, in order that such lienors or their attorneys may have notice of the appraisement and see to it that it is a proper or "due" appraisement.

§ 547. Insurance on the Vessel.

The question whether it was necessary to include the amount of any insurance on the offending vessel in fixing the limit of her owner's liability was finally settled in the negative. The courts having decided that the owner's liability was limited, not by the value of the ship and freight before the collision but after, it became necessary to decide whether "the amount or value of the interest of such owner" should be held to include the amount of the owner's insurance. This was a question which seems never to have presented itself to the mind of the legislature at all; and as there was nothing in the words of the act decisive of the question it became necessary for the courts to decide whether the value to be taken should be held to be the value to the owner himself, and thus to include the insurance, or the value in the market, and thus not to include it. The Supreme Court, by a vote of five to four, decided in favor of the latter construction.¹⁰⁷

¹⁰⁷ *The City of Norwich*, 118 U. S. 468.

That is, the court held that as between the two systems, one of which left to the shipowner his insurance and the other required him to surrender his insurance as well as his vessel, in order to be freed from liability, the former is to be preferred. The same view was taken by the Royal Congress for the Assimilation of Mercantile Law, held in Brussels in September, 1888, at which were represented the Governments of the United States, France, Spain, Italy, Finland, Mexico, Norway, Luxemburg, Japan, Holland, Portugal, Argentine Republic, Roumania, Russia, Switzerland and Turkey.

§ 548. The Monition.

The provisions of Admiralty Rule 54 indicate that the appraised value is to be paid into court or secured, or the property transferred to the trustee, before the court shall issue its monition to all persons claiming damages.¹⁰⁸ That rule provides that the petitioner shall file his petition, whereupon the court, having caused due appraisal to be had, shall make an order for the payment into court of the appraised value or the giving of a stipulation for the same, or shall make an order for the transfer of the owner's interest to a trustee; and, "upon compliance with such order," the court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage or injury, citing them to appear and make due proof of their respective claims (i. e., appear before the commissioner and file the claims), at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and that public notice of such monition shall be given as in other cases, and such further notice re-served through the post-office, or otherwise, as the court in its discretion shall direct. In cases of surrender, the monition should cite all persons having any claim upon the vessel (i. e., other claimants than those having claims arising out of the particular loss, damage or injury, as well as the latter).¹⁰⁹ And in all cases the monition should call upon all parties to appear before the court and answer on oath the allegations of the petition, if answer they have.

This is the formal monition to all the world. It has been shown above that previous notice of the appraisal should be given to all known claimants. *Ante*, § 542.

The marshal may either publish and serve the full monition, or a short citation, setting forth the substance of the monition. Personal

¹⁰⁸ See *Ex parte Slayton*, 105 U. S. 451.

¹⁰⁹ Dist. Rule 74.

service of it should be made upon the attorneys for the claimants who have commenced suits or actions, and upon known claimants who have not commenced action, and service of it through the post-office should be made upon distant claimants or their attorneys. The marshal must also, in a newspaper indicated by the court, publish the notice "as in other cases," (i. e., in the Southern District of New York, once a day for fourteen days,) and thereafter once a week until the return day of the monition, which day must be not less than three months from the day it was issued, and the marshal should make return both that he has published the monition and has cited all persons. The court may direct a further service or longer publication if it deems it advisable, and may allow claimants to file their claims after the time named in the monition has expired."¹¹⁰ But claimants who file delayed claims cannot reopen the proceedings already had, but are bound by the result of them,¹¹¹ and they may delay their appearances so long that their right to intervene will be denied.¹¹²

§ 549. The Injunction.

Admiralty Rule 54 provides, as in the matter of the monition, that "upon compliance with" the order for payment into court of the appraised value or the giving of security therefor or upon surrender to a trustee, the court shall, upon application, issue its order restraining the further prosecution of all and any suits against the owner in respect of any claims arising out of the damage or loss specified. The latter order must be deemed to be the general restraining order which not only enjoins the further prosecution of suits already begun, but also forbids the instituting of other suits. It is doubtful whether the court would, on the mere filing of the petition, acquire jurisdiction to issue an injunction; since it is held that the mere filing of an ordinary libel, without seizure of the *res* or appearance of a defendant, is insufficient to give the court jurisdiction.¹¹³ In a case of great need for the immediate issuing of an injunction, the court would, no doubt, on the special cause shown, order the marshal to seize the *res*, even if only to turn it over later to the trustee; and by such seizure the court would acquire full jurisdiction. Or the petitioner might pay into court at the time of filing his petition, a sum of money, with the averment

¹¹⁰ *The Argus*, 100 F. R. 143; *The City of Boston*, 159 F. R. 257.

¹¹¹ *The City of Boston*, 159 F. R. 257.

¹¹² *In re Eastern Dredging Co.*, 159 F. R. 549.

¹¹³ *Taylor v. Carryl*, 20 How. 583; *The Frank Vanderkerchen*, 87 F. R. 763.

that it represented the whole or a portion of the value of his interest in the vessel, and on obtaining possession of such fund the court would acquire jurisdiction, even though the subsequent appraisal should show that the sum so paid in was insufficient and must be increased; for the court acquires full jurisdiction on obtaining possession of even part of the *res* involved.”¹¹⁴ There would rarely seem to be any necessity for such haste in the issuing of the injunction, since, whenever it does issue, it will set aside the attachment of a sheriff, or stay an action about to be brought to trial in a state court,¹¹⁵ or in a federal court at common law,¹¹⁶ or prevent the issuing of an execution against the petitioner on a judgment already entered. The latter would seem to be the only case where an injunction might be immediately imperative, and he would be a laggard petitioner who would delay his limitation proceeding until an action or suit in another court had reached that point.

In *Petition of the Norwich and New York Transportation Company*,¹¹⁷ it was held that the injunction would not restrain attorneys in actions already begun in other courts, from collecting their costs in those actions. The later practice, however, is for the District Court to compel the payment of such costs by providing for their payment in the final decree granting the limitation.

§ 550. The Security.

When the appraisement has been made, the court makes an order that the amount of the appraised value be paid into court or that the petitioner give a stipulation with sureties for its payment into court when ordered. This order being made, the petitioner makes the payment or gives the stipulation.

The stipulation is in the ordinary form of an admiralty stipulation to abide by all orders of the court, and pay into court the amount awarded by the final decree of the district court, or of an appellate court, with interest. It should be approved by the court.¹¹⁸ Notice of the application for approval of the stipulation should be given to all parties, who have appeared on the appraisement or have had notice of it.

¹¹⁴ *Ex parte Slayton*, 105 U. S. 451.

¹¹⁵ *Prov. & N. Y. S. Co. v. Hill Mfg. Co.*, 109 U. S. 578. The case of *Knowlton v. N. Y. & Prov. S. S. Co.*, 53 N. Y. 76, was not referred to in the above case, but must be deemed overruled. See also *In re Whiteland*, 71 F. R. 733.

¹¹⁶ *Seese's Adm. v. Mon. R. C. C. & C. Co.*, 155 F. R. 507.

¹¹⁷ *Petition of the Norwich & N. Y. Trans. Co.*, 10 Ben. 193.

¹¹⁸ Dist. Rule 76; *The Battler*, 58 F. R. 704.

§ 551. Proof of Claims. I.

The monition provided for in Admiralty Rule 54 cites the parties to appear before the court and to "make due proof of their respective claims." By Rule 55 this proof is to be presented before a commissioner to be designated by the court. The commissioner need not be one of the standing United States commissioners.

The *prima facie* claim, or rather notice of claim, the filing of which is necessary in order to enable a claimant to answer the libel and contest the right of the petitioner either to an exemption from liability, or to a limitation of liability, or both,¹¹⁹ need be merely a verified statement, or affidavit of the nature, grounds and amount of the claim, and what payments, if any, have been made on account, with a bill of particulars giving the respective dates and amounts, if the claim consists of several different items.¹²⁰ Where the claim is in tort, a verified statement should be filed, in form somewhat similar to a brief libel showing the grounds on which the claimant bases his right to damages, and closing with a prayer for the allowance of the amount sought as damages. It should be filed before the return day of the monition. But see *ante*, § 548. No further proof of the claim than such notice of claim is or should be required until after the hearing by the court of the merits of the petitioner's application for limitation of his liability or for total exemption from liability; for, until the hearing and decree thereon, it cannot be known whether or not there will be any fund for distribution.¹²¹ But any claimant, or the petitioner himself, may file an objection to any claim and thus reserve the right to contest the same before the commissioner, if the matter is returned to the commissioner for further proof of claims after an interlocutory decree of the court holding the petitioner wholly or partly liable. In the Southern District of New York, such objection must be in writing, stating any specific defence which will be urged against the claim, and a copy must be given both to the commissioner, and to the proctors of the claim objected to, and it must be filed within five days after the return of the monition, or after the interlocutory decree in case of issue joined by answer to the petition, or within such further time as may be allowed by the court.¹²²

On the return day of the monition, the commissioner must file in

¹¹⁹ Ad. Rule 56.

¹²⁰ Dist. Rule 78.

¹²¹ *La Bourgonne*, 106 F. R. 232.

¹²² Dist. Rule 78.

open court a list of all claims, notice of which has been presented to him.¹²⁸

§ 552. Proof of Claims. II.

If, on the hearing before the court on the merits of the petition, the same is sustained in full and total exemption granted to the petitioner from the claims for the loss, damage, destruction or injury alleged, final decree in petitioner's favor is entered, and there are, of course, no further proceedings before the commissioner. If, on the contrary, the opposite result is reached by the court, and the petitioner is held not only liable but not entitled even to a limitation of his liability, it is our opinion that the petition should not be dismissed, but that a decree should be entered as in an ordinary admiralty suit, declaring the petitioner liable in full to the claimants for the consequences of the accident, and holding him liable to pay the amounts already found by the commissioner if the claims filed have not been objected to, and referring the matter, as on an ordinary interlocutory decree, to the commissioner to ascertain the exact amount of the claimants' damages, if the claims, as filed, have been objected to. No authoritative decision has been rendered as to whether the court can do this, or must simply dismiss the petition and leave the claimants to take such action as they may be advised. See *ante*, § 527.

§ 553. Proof of Claims. III.

But in the case where the court finds the petitioner liable on the issue of total exemption, but nevertheless entitled to limit his liability to the amount of the value of his interest in the vessel and her pending freight, as surrendered or appraised, then there is no doubt but that the court will refer the matter back to the commissioner to complete the proof of claims. Such reference is like an ordinary reference to prove damages. Any claimant is entitled to contest the claim of any other claimant, and to assert any priority which he himself may have or claim to have. Other claimants against the vessel than the immediate claimants who have suffered damages by reason of the matters set forth in the petition, may appear and assert their claims and their priorities, provided they have appeared in the proceeding by filing due notice of claim with the commissioner. The petitioner himself may appear on the reference and contest the claims,

¹²⁸ Dist. Rule 78.

whenever it appears that there is a probability or a possibility that the claims may be so reduced that a portion of the surrendered value may be returned to the petitioner. But if it is evident that the claims will equal or exceed the surrendered value and that there can be no possibility of a surplus to be returned to the petitioner, the commissioner would no doubt refuse to allow the petitioner to contest claims in the amount of which he could have no interest, or, by interference, to lessen the amount of the fund which he has surrendered and which must eventually all go to the claimants and in no part to him.

When all the evidence has been submitted to the commissioner, the latter reports thereon to the court in the usual form, and his report is subject to exception by any party who is dissatisfied with his conclusions, and is confirmed or overruled in whole or in part as on ordinary reference to compute damages.

§ 554. The Answer.

Any one who has presented a claim on oath before the commissioner may answer the petition, and contest the right of the petitioner to the exemption from liability or to the limitation prayed for.

The words of the rule are that he "shall and may answer."¹²⁴ The presentation of the claim under oath before the commissioner is not all that is necessary if claimant desires to contest the petitioner's plea either for a total exemption from liability or for a limitation of his liability. But if the petitioner seeks only to limit his liability, and the claimant is satisfied that such limitation will be granted, no answer is necessary and claimant may reserve his activities for the proceedings before the commissioner. If the party who has presented such a claim fails to appear in court on or before the return day of the monition and to make answer then or in such further time as the court may allow, his default may be taken. And if no answer is interposed a decree pursuant to the prayer of the libel may be taken by default. And this alike, whether the prayer is for an exemption from or a limitation of liability.

A petitioner may ask a limitation, or a total exemption from liability. A different answer is required in the two cases. In the first case a denial of the allegations of the petition is generally sufficient. In the second, the claimant should add to such denials a statement of his version of the occurrence out of which the loss arose.

¹²⁴ Ad. Rule 56. It is not sufficient simply to deny the petitioner's allegation of freedom from fault, but the particular faults alleged as grounds for denying the petition must be set forth in the answer. In re Starin, 173 F. R. 721.

§ 555. Hearing.

If answer is interposed, the cause must stand for hearing on proofs like any other cause at issue, but it may not be heard until after the publication of the monition, unless for some special cause.¹²⁵ This is to insure to all claimants an opportunity to appear and contest. Whether an answer is interposed or not, sufficient proof of the jurisdictional facts, giving the court authority to make the decree, should be before the court. Although the lack of privity and knowledge on the part of the owner is jurisdictional, it is usually heard with the question of the general liability of the petitioner, although the latter fact is not jurisdictional; the convenience of the court and the parties renders it well to have the whole matter heard at one time.¹²⁶ It was held in the case of *The Garden City*,¹²⁷ that the fact that the claims exceed the value of petitioner's interest need not be alleged or proved. The effect of this rule is to give to the shipowner the right to compel the holder of any single claim which has occurred without the owners privity or knowledge, to come into the admiralty, and thus to deprive him of a jury trial, as to which right comment has been made elsewhere. See *ante*, § 137-139.

The regular form of a hearing is for the petitioner to open the proceeding by reading his libel and then offering some proof to inform the court of the nature of the disaster, and proving in full his lack of privity and knowledge therein. Or, if the disaster alleged is a fire, the latter proof may be omitted.¹²⁸ The claimants thereupon take up the hearing, and in cases where total exemption is claimed, offer their full proof to show negligence or general liability on the part of the petitioner, and in cases where either limitation or exemption is claimed, offer their evidence to disprove the petitioner's averments of lack of privity or knowledge. The petitioner thereupon rebuts on the issue of his general fault and liability for the disaster. The matter having been submitted to the court, the latter in due course pronounces its decree, as in ordinary cases, and signs a final decree, if it has held the petitioner wholly exempt, or an interlocutory decree and order of reference back to the commissioner for proof of claims on file, if it has held the petitioner wholly liable or entitled to a limitation. The proceedings before the commissioner in the latter case have already been spoken of. *Ante*, § 553.

¹²⁵ Dist. Rule 77.

¹²⁶ *In re Eastern Dredging Co.*, 159 F. R. 541.

¹²⁷ *The Garden City*, 26 F. R. 766.

¹²⁸ Rev. Stat. § 4282.

§ 556. Distribution.

The commissioner having reported the claims as finally proved, and his report having been confirmed, the proper distribution of the fund in court can be ascertained by deducting from the amount of the fund the fees of the commissioner, trustee and clerk, and the costs of the proctors, and making a division of the balance among the claimants found entitled to share. The amount of the fund is shown by the clerk's record of the payment into court, or by the stipulation given or by the report of the trustee that he holds a certain amount. The questions of priority among claimants having been reported by the commissioner, with the general report of claims, and agreed to as reported, or else settled by the court on exceptions to the commissioner's report, such priorities are to be observed on the distribution.¹²⁹ All lawful claims are recognized, however, unless barred by law, e. g., by the Harter Act,¹³⁰ or unless the admiralty denies their existence, or unless a claimant has in some way forfeited his right to share;¹³¹ and the court may pass upon the question as to whether a claimant, or his insurer, who has paid the loss and asserts a subrogation, is entitled to share in the fund.¹³²

§ 557. Interest.

The shipowner may avoid the payment of interest on claims eventually found valid by the surrender of his interest to the trustee or the payment at once of the appraised value into court.¹³³ The trustee will sell the *res* surrendered and place the proceeds at interest, and some interest is always received on deposits with the clerk. And the interest so accruing, which is usually not more than two or three per cent, is all of the interest on the claims which will be allowed to claimants. But if the petitioner prefers to retain the *res* and give a stipulation for its value, then the stipulation must include interest on the amount of the stipulation from its date to the date of final decree,¹³⁴ and in the case of an unsuccessful appeal by the petitioner

¹²⁹ Ad. Rule 55; *In re Lakeland Trans. Co.*, 103 F. R. 328; *The George W. Roby* (S. C. on appeal) 111 F. R. 601; *In re California Nav. & I. Co.*, 110 F. R. 678; *The Mauch Chunk*, 139 F. R. 747.

¹³⁰ Act of February 13, 1893, 27 Stat. p. 445; *In re California Nav. & I. Co.*, 110 F. R. 678.

¹³¹ *The Hamilton*, 207 U. S. 398; *The Battler*, 67 F. R. 251; *The Catskill*, 95 F. R. 700; *The Mauch Chunk*, 139 F. R. 747.

¹³² *The St. Johns*, 101 F. R. 469.

¹³³ *The Battler*, 58 F. R. 704.

¹³⁴ *In re Harris*, 57 F. R. 243; *The Battler*, 58 F. R. 704; *The H. F. Dimock*, 77 F. R. 226; *The George W. Roby*, 111 F. R. 601.

interest may be decreed against him personally.¹²⁵ And this interest will run at the rate usual on stipulations, i. e., six per cent. And where a respondent who is sued personally sets up the defence of limitation of liability, which is sustained, but makes no surrender and gives no stipulation, interest will run against him at the usual rate on the value of the vessel as it was at the time of or immediately after the accident.¹²⁶

§ 558. Costs and Expenses.

The amount of the statutory costs and fees in limitation of liability proceedings are, of course, no different from the amounts in other cases, but there are many disbursements connected with such a proceeding which are not included in an ordinary suit. The question as to who shall pay the costs and disbursements under the varying results of such a proceeding is not entirely well settled and decisions will be found at variance with the statements here made. The later practice seems to be as follows:

The costs and disbursements are divided into three classes (1) the preliminary expenses, such as the charges for filing petition and stipulation for costs, the expenses of appraisal and stipulation for value, or the expenses of transferring the *res* to the trustee; (2) the expenses of administration, which include the issuing and publishing of the monition to call in creditors, the expense of sale, if a sale is had, the expense and commissions of the trustee, and the expenses of the reference to prove claims; (3) the costs of trial, where the issue of limitation or total exemption is contested, which are the usual fees of witnesses, proctors, clerk and stenographer on the trial.

In all cases, the petitioner must pay the preliminary expenses, for such expenses are incurred by him for the purpose of availing himself of the benefit of the limitation statutes, and are not taxable against claimants, even though the latter are defeated.

In all cases, the expenses of administration are paid out of the fund, on the principle that the fund should administer itself. When the petitioner is successful and the fund is returned to him, this amounts to the payment of costs by a successful party, but the reason is, of course, the same as in the case of the preliminary expenses, i. e., that the payments were for the petitioner's benefit.

If either the issue of the petitioner's right to exemption or to a

¹²⁵ The *H. F. Dimock*, 77 F. R. 226.

¹²⁶ *Smith v. Booth*, 112 F. R. 553; see *The Scotland*, 105 U. S. 24.

limitation is contested by claimants, the losing party pays the costs of contest as in other cases.¹³⁷

§ 559. Final Decree.

The petitioner may be content with the interlocutory decree of the court which allows his claim of limitation of liability and orders a reference to ascertain the amount of the damages. That decree may be final so far as the rights of the petitioner are concerned and he may have no further interest in the proceeding which he himself has instituted; but such decree is not the decree in the proceeding which is final so that an appeal can be had therefrom.¹³⁸ If the decree exempts the petitioner entirely from liability, it is no doubt final; but where it does not give exemption, but only a limitation and orders other things to be done, as the ascertainment of claimants' damages, it is interlocutory only, and the final decree is made on the coming in of the commissioner's report. This final decree should repeat the provisions for the granting of a limitation of his liability to the petitioner and for a perpetual injunction in his favor; it should also provide for the distribution of the fund among the successful claimants *pro rata* or in the order of their priorities; and if the amount of the claims has not proved equal to the fund, it should provide that the surplus be returned to the petitioner.¹³⁹ A decree awarding or refusing damages to claimants having distinct claims is several and appealable as to any one of the claimants.¹⁴⁰

After the entry of final decree, the power of the District Court in regard to the proceeding is at an end, except to see to it that the decree is executed, and it cannot reopen the proceeding to allow claimants who have not theretofore appeared to come into the matter, provided the monition has been issued and publication had in accordance with the rules.¹⁴¹

¹³⁷ *The W. A. Sherman*, 167 F. R. 976; *The Vernon*, 36 F. R. 113; *The Leonard Richards*, 41 F. R. 818; *The Thingvalla*, 1 U. S. App. 32; *In re Harris*, 57 F. R. 243; *The H. F. Dimock*, 77 F. R. 226; *The Longfellow*, 104 F. R. 360; *In re Excelsior Coal Co.*, 136 F. R. 271, *aff'd* 142 F. R. 724.

¹³⁸ *La Bourgogne*, 210 U. S. 95.

¹³⁹ *Wallace v. Prov., etc., S. S. Co.*, 14 F. R. 56. In *The John Bramall*, 10 Ben. 495, no claim was ever proved, and, some years after decree of limitation, the court ordered the whole fund returned to petitioner, on his giving a stipulation to repay it if ordered. This fact, of course, does not appear in the report of the case.

¹⁴⁰ *The Columbia*, 73 F. R. 226.

¹⁴¹ *Dowdell v. U. S. District Court*, 139 F. R. 444. If there has been any irregularity in the proceedings, claimants who have not been notified would

§ 560. Summary of Practice.

Draw the petition for limitation, setting forth the necessary jurisdictional facts, and the facts required by the district court rules, and if exemption is prayed for, the facts showing the right to exemption, and asking an appraisal or offering a surrender, as desired, with prayers for appropriate relief. File this in the clerk's office, with a stipulation for costs in the sum of \$250.

If an appraisal is desired for the purpose of bonding, obtain order for appraisal and give notice of the appraisal to all known claimants. After the appraisal enter order for payment into court or for giving stipulation, and pay into court the amount of the appraised value, or file an approved stipulation in the ordinary form for such amount.

If a surrender of the vessel is desired, obtain order appointing trustee, execute a bill of sale or assignment, and turn over the bill of sale or the assignment, and the vessel, to him and pay to him any pending freight.

Make proof by affidavit of the accomplishment of the above matters, and obtain order appointing a commissioner to receive proof of claims, directing a monition to issue, and temporarily enjoining any suits which may have already been begun against petitioner or his vessel, and the commencement of further suits. The monition is issued by the clerk to the marshal, who serves it and publishes notice, as directed by the court, in a designated newspaper.

Before the return day of the monition, each claimant must appear before the commissioner and make proof of his claim. In the Southern and Eastern Districts of New York this is done by filing with the commissioner an affidavit, specifying the nature, grounds, and amount of the claim, the particular dates on which the same accrued, and what, if any, credits were given thereon, and what payments, if any, have been made on account; with a bill of particulars giving the respective dates and amounts, if the claim consists of different items.

On the return day of the monition the commissioner must file a report setting forth the various claims proved before him. The petitioner, on return of the monition duly served should obtain an order for the default of any and all persons who have not so proved claims, and, if he has surrendered the vessel and does not intend to contest his liability, and no answer is interposed or time to answer obtained, he may take an order limiting his liability, and making perpetual the injunction against suits arising out of this cause of probably have the right of independent suit against the petitioner, notwithstanding the limitation proceeding. Id.

action; but, for reasons stated above, ante, § 559, he may well await the final disposition of the fund.

On the return of the monition, claimants must appear and answer or be defaulted as to the question of petitioner's right to limitation or total exemption. If an answer is filed, petitioner enters an order that all proceedings before the commissioner be suspended until the determination of the petitioner's liability.

Within five days after the return of the monition, or after interlocutory decree in case of issue joined by answer to the petition, and within such further time as may be granted by the court, petitioner, or any claimant, should file with the commissioner any objection he may have to any claim, and serve the same on the proctors of the claim objected to. Unless this is done, the claim is deemed established. If answer is filed to the petition, any party may put the case on the calendar and it will be tried in the ordinary way.

If petitioner is held to be not liable, tax costs and enter a decree declaring him not liable, cancelling his stipulation for the appraised value, or restoring to him his vessel and freight in the hands of the trustee, or repaying to him any proceeds thereof in the registry of court.

If petitioner is decided to be liable, but entitled to his limitation, enter a decree limiting his liability to the fund or the vessel, and making perpetual the injunction against suits. But as indicated above, petitioner may still prefer to await the final disposition of the fund. He will probably have no further interest in the proceeds of his vessel, but is entitled to notice of reference before the commissioner, and may attend and cross-examine. In any event the claimants may obtain an order referring the matter back to the commissioner for further proof of claims, and on this hearing may offer proof to reduce each other's claims as on an ordinary reference, and may except to the commissioner's report.

The commissioner having reported and his report having been confirmed, the petitioner, or any claimant, may enter the final decree, reciting all the facts, the limitation of petitioner's liability to the value of his interest in the vessel, decreeing to the petitioner perpetual exemption from any further liability arising out of the cause of action, and ordering payment to the various claimants according to the report, and, if petitioner has given a stipulation, calling upon the stipulators to fulfill their obligation, as in ordinary cases.

CHAPTER XXXVI.

APPEALS.

§ 561. The Circuit Court of Appeals Act.

The Act of Congress of March 3, 1891, (26 Stat. p. 826), which established the Circuit Courts of Appeals, substituted a new system for the previous mode of review of admiralty causes by which two appeals were allowed, first to the Circuit Court of the district and then to the Supreme Court of the United States. Under the present system decrees of the District Court in Admiralty are reviewed by one appeal only, i. e., to the Circuit Court of Appeals, except in certain cases in which one appeal lies from the District Court directly to the Supreme Court of the United States. No appeal lies from the decisions of the Circuit Court of Appeals to the Supreme Court, but that court may, if it will, issue a certiorari to review a decision of the Circuit Court of Appeals, and the latter court may certify to the Supreme Court any question or proposition of law concerning which it desires the instruction of that court for its proper decision.¹

§ 562. Appeals to the Supreme Court.

The Act of 1891 provided a scheme by which appeals from the District and Circuit Courts should be distributed between the Supreme Court and the Circuit Courts of Appeal. In *United States v. Jahn*,² the Supreme Court sets forth with particularity the occasions for appealing to the one court or the other. The Act provides that the Circuit Courts of Appeal shall have jurisdiction to review final decrees in admiralty, and that the decrees of the Circuit Courts of Appeal shall be final in such cases, so that in the great majority of cases there is only one appeal in admiralty, i. e., to the Circuit Court of Appeals, and the only possibility of obtaining a hearing in the Supreme Court is by certification of some question by the Circuit Court of Appeals or the issuing of a certiorari by the Supreme Court. An appeal in

¹ Act of March 3, 1891, (26 Stat. L. 826) sec. 6.

² *U. S. v. Jahn*, 155 U. S. 109.

admiralty, however, may be taken as of right directly to the Supreme Court in any cause in which the jurisdiction of the District Court is in issue, in prize causes, in any admiralty cause which involves a constitutional question, or a question of the constitutionality of a United States law or the validity or construction of a treaty, or in which a state law is claimed to be in contravention of the United States Constitution.³ The provision for such appeals in cases of the conviction of a capital crime applies, under Rev. Stat. § 563 (1), to the Circuit Courts only.

Appeals may not be taken to the Supreme Court from other than final decrees,⁴ and simultaneous appeals to the Supreme Court on the question of jurisdiction and to the Circuit Court of Appeals on the merits are not allowed.⁵ Where an appeal is taken on a question of jurisdiction alone, it must be taken to the Supreme Court,⁶ but an appeal may be taken to the Circuit Court of Appeals on the whole case, even though the question of jurisdiction of the District Court is one of the questions involved,⁷ and in this case the Circuit Court of Appeals may either itself pass upon the jurisdictional question or certify it to the Supreme Court.⁸ When an appeal on a question of jurisdiction is taken directly from the District Court to the Supreme Court, the Act provides that the question presented shall be certified by the court below.⁹

³ Act of March 3, 1891, 23 Stat. p. 826, sec. 5. In prize cases, appeals may be taken directly to the Supreme Court without regard to amount, and without certificate of the District Court; *The Paquete Habana*, 175 U. S. 677.

⁴ *McLish v. Roff*, 141 U. S. 661; *Kirwan v. Murphy*, 170 U. S. 205; *McLeod v. Graven*, 79 F. R. 84; *City of New Orleans v. Fisher*, 91 F. R. 574; *The Annie Faxon*, 87 F. R. 961. The dismissal of a cross libel in admiralty for lack of jurisdiction, before the whole case is heard, is not such a final decision as will permit an appeal directly to the Supreme Court; *Bowker v. U. S.*, 186 U. S. 135.

⁵ *Columbus C. Co. v. Crane Co.*, 174 U. S. 600. Though a constitutional question might be taken to the Supreme Court at the same time that an appeal on the merits to the Circuit Court of Appeals is had; in such case the latter court would await the decision of the Supreme Court on the constitutional question; *Pullman, etc., Co. v. Central T. Co.*, 76 F. R. 401.

⁶ *Davis, et al. v. Barber*, 60 F. R. 465; *Cabot v. McMaster*, 65 F. R. 533; *The Alliance*, 70 F. R. 273; *Excelsior Co. v. Pacific Co.*, 109 F. R. 497.

⁷ *American Sugar Ref. Co. v. Johnson*, 60 F. R. 503; *Baltimore & O. R. Co. v. Meyers*, 62 F. R. 367; *Rust v. United W. Co.*, 70 F. R. 129; *Wiigman v. Persons*, 126 F. R. 449.

⁸ *Grand Trunk W. R. Co. v. Reddick*, 160 F. R. 898.

⁹ Act of March 3, 1891 (26 St. p. 826), sec. 5.

§ 563. Practice on Appeals from District to Supreme Court.

Under the rules of the Supreme Court, the practice on an appeal directly from a District Court to the Supreme Court varies slightly from an appeal to the Circuit Court of Appeals, at least in the Second Circuit. Rule 36 of the Supreme Court provides that such an appeal may be allowed, in term time or vacation, by a Supreme Court justice, or by any Circuit judge within his circuit, or by any District judge within his district, and that such justice or judge may sign the citation. The rule indicates, therefore, the necessity for an allowance of the appeal, and for citation. Supreme Court rule 35 provides for an assignment of errors, which should be in the same form as on an appeal to the Circuit Court of Appeals.

The appellant on such an appeal, therefore, must prepare his notice of appeal, assignment of errors, cost bond and bond to stay execution, if a stay is desired. Where the appeal is based on the question of the jurisdiction of the District Court, the appellant must also obtain the certificate of the District judge, setting forth the jurisdictional question. It is essential that the certificate be obtained and filed during the term at which the decree appealed from was entered.¹⁰ An appeal to the Supreme Court, in which the jurisdiction of the District Court only is in question, will not be heard without such certificate,¹¹ except that it has been held that when the decree itself of the District Court shows distinctly and unequivocally that the court below sends up a single and definite question of jurisdiction, the certificate may be dispensed with.¹² As matter of practice, it is well to obtain such certificate in every case of this kind, and not to leave the matter to rest on the form of the final decree. All of the above papers must be filed in the clerk's office of the District Court, and the order of that court obtained approving the bond, allowing the appeal, and, if necessary, directing a stay of execution. The judge of the District Court will also sign a citation, directing the appellee to appear before the Supreme Court at the opening of the following term of that court; the citation must be served upon the proctor for appellee, and returned, with proof of service, to the clerk of the District Court, who includes it in the

¹⁰ *Colvin v. Jacksonville*, 158 U. S. 456; *The Bayonne*, 159 U. S. 687.

¹¹ *Maynard v. Hecht*, 151 U. S. 324; *Colvin v. Jacksonville*, 158 U. S. 456; *The Bayonne*, 159 U. S. 687; *Chappell v. U. S.* 160 U. S. 499; *Merritt v. Bowdoin*, 169 U. S. 551; *Courtney v. Pradt*, 196 U. S. 89.

¹² *Huntington v. Laidley*, 176 U. S. 603; *In re Lehigh Co.*, 156 U. S. 322; *Shields v. Coleman*, 157 U. S. 168; *Chappell v. U. S.*, 160 U. S. 499; *Arkansas v. Schlierhlz*, 179 U. S. 598; *Excelsior Wooden Pipe Co. v. Pacific Bridge Co.*, 185 U. S. 282; *U. S. v. Larkin*, 208 U. S. 333; *The Steamship Jefferson*, 215 U. S. 130.

record. The record is made up by the clerk and forwarded to the clerk of the Supreme Court. Briefs on appeals to the Supreme Court are to be prepared in the form required in briefs in cases in the Circuit Court of Appeals (*post*, § 585), and twenty-five copies must be filed by the appellant six days, and by the appellee three days before the case is called for argument. The size of the page of a Supreme Court brief is nine by six inches, and Rule 31 of that Court requires that all briefs shall be printed on unglazed paper, and the type used therein shall never be smaller than small pica.¹³

§ 564. Appeals to the Circuit Court of Appeals.

Shortly after the passage of the Act creating the Circuit Courts of Appeal, the Supreme Court caused to be prepared and proposed to the various Circuit Courts of Appeals a set of rules, which were thereafter adopted by all of the Circuit Courts of Appeals. No distinction between admiralty and other causes was made in those rules. In some of them admiralty causes were specifically mentioned. Others of them were as applicable to admiralty as to other causes, while others were inapplicable to admiralty causes.

After the organization of the courts, the Circuit Court of Appeals for the Second Circuit appointed a committee of the bar to propose admiralty rules. And on the report of that committee, the court ordered the adoption of the rules proposed, which went into effect July 1, 1892, and which, as amended, are the Circuit Court of Appeals Admiralty Rules referred to in this chapter, and which will be found in the Appendix, pp. 507-511.

By the last of these admiralty rules (Ad. Rule 19) it is specified which of the general rules are to be deemed to be admiralty rules.

The practice on appeals in admiralty to the Circuit Court of Appeals is therefore, in the Second Circuit at least, governed by the Act of 1891, and by the admiralty rules adopted by that court.

§ 565. Who May and Should Appeal.

In suits *in personam* the party aggrieved by the decision of the trial court is the proper party appellant.¹⁴ In suits *in rem*, where the decree is against the vessel, the claimant is the proper appellant, even if he is only the master of the vessel, and the owner is present in the suit.¹⁵ A person not a party, or privy to the decree, cannot appeal

¹³ See *R. R. Co. v. Jacobson*, 179 U. S. 294.

¹⁴ See *Hume v. Frenz*, 150 F. R. 502.

¹⁵ *Aiken v. Smith*, 54 F. R. 894.

therefrom.¹⁶ All parties against whom a decree is rendered should join in the appeal:¹⁷ but sureties on a stipulation are not parties, and need not join.¹⁸ In limitation of liability proceedings, any claimant against the fund may appeal alone.¹⁹

§ 566. Effect of the Appeal.

Until the establishment of the Circuit Courts of Appeal in 1891, review of the decree of the District Court was had in the Circuit Court, and such appeal was a new trial. New pleadings could be put in, new proofs taken, the libellant opened and closed the argument, as in the court below, and the Circuit Court executed its own decrees.

The Circuit Court of Appeals Act created a court which was entirely a court of review, and which did not execute its own decrees. Assignments of error were required, and the statute, and the general rules propounded for the Circuit Courts of Appeal by the Supreme Court, made no provision for new pleadings or new evidence. And so, in some of the circuits, an appeal in admiralty has not been regarded as a trial *de novo*, but as a review of the decree of the court below on points of law only. The Ninth Circuit has held that findings of fact, made by the District Court on conflicting evidence, will not be disturbed on appeal, unless clearly contrary to the evidence,²⁰ which holding is inconsistent with the idea that an appeal is a new trial. The Fourth Circuit has held the same, though sometimes in a modified form, i. e., that the conclusion of the District Court on points of fact is entitled to great respect, but is not necessarily binding.²¹ Other circuits have held as above,²² or have not passed on the point. It has

¹⁶ *Ex parte Cutting*, 94 U. S. 14; *Guion v. Ins. So.*, 109 U. S. 173; *Elwell v. Fosdick*, 134 U. S. 500; *Aiken v. Smith*, 54 F. R. 894.

¹⁷ *The Columbia*, 67 F. R. 942; *Consumers C. O. Co. v. Nichol*, 120 F. R. 818.

¹⁸ *The Glide*, 72 F. R. 200; *The New York*, 104 F. R. 561; *Perriam v. Pacific Coast Co.*, 133 F. R. 140.

¹⁹ *Short v. The Columbia*, 73 F. R. 226.

²⁰ *The Alijandro*, 56 F. R. 621; *Whitney v. Olsen*, 108 F. R. 292; *Jacobsen v. Lewis Klondike Ex. Co.*, 112 F. R. 73; *Alaska Packers' Assn. v. Dominico*, 117 F. R. 99; *The Oscar B.*, 121 F. R. 978; *Paauhau, etc. v. Palapala*, 127 F. R. 920. But in the *San Rafael*, 141 F. R. 270, the court held that the Circuit Court of Appeals has the jurisdiction on admiralty appeals formerly held by the Circuit Court.

²¹ *Baker-Whiteley Coal Co. v. Neptune Nav. Co.*, 120 F. R. 247; *Jamesson v. Lewis*, 131 F. R. 728; *Coastwise T. Co. v. Baltimore S. P. Co.*, 148 F. R. 837; *The Lucy*, 74 F. R. 572; *The Bowden*, 78 F. R. 649; *The Brandywine*, 87 F. R. 652; *The E. Luckenbach*, 93 F. R. 841; *The Anaces*, 106 F. R. 742; *The Edward Smith*, 135 F. R. 32.

²² *Elphicke v. White Line Towing Co.*, (8th Ct.) 106 F. R. 945; *City of*

also been held that when a District judge saw and heard the witnesses, he is better qualified than the appellate court to judge of their truth or falsity, and his findings in such cases will not be disturbed, while the same rule does not obtain when the testimony below was taken out of court.²³ And the Circuit Courts of Appeal have also held that the conclusions of a master or commissioner on matters of fact, made on conflicting evidence, will not be disturbed unless in cases of palpable mistake.²⁴ A point not considered below will not be considered on appeal,²⁵ though a plain error may be noticed.²⁶ And in many cases it has been held that one who has not appealed from the decree below can be heard in the appellate court only in support of that decree, and can get, in the higher court, no more relief than has been allowed him by the decree of the lower court.²⁷

All of these holdings follow the idea that a present-day appeal is not a new trial, and hence is not an admiralty appeal in the older sense of that term, but rather resembles a writ of error at common law.

§ 567. In the Second Circuit an Appeal is an Admiralty Appeal.

The Second Circuit differs from all of the other circuits in having propounded special rules to govern admiralty appeals. By the first of these rules, the appeal is directed to be heard on the pleadings and evidence in the District Court: by the seventh and eighth rules, provision is made that either party, on cause shown, may make new allegations or pray different relief, or interpose a new defence, or take new proofs: and, by the eighteenth rule, the District Court rules are to cover admiralty matters in the Circuit Court of Appeals not expressly provided for by the admiralty rules of that court.

These rules pointed toward the retention by the Second Circuit, of the theory that an admiralty appeal is a trial *de novo*. And though the Circuit Court of Appeals for that circuit at first held that, on appeal, an appellant cannot be heard except in support of the decree

Cleveland v. Chisholm, (6th Ct.) 90 F. R. 431; Memphis & N. P. Co. v. Hill, (8th Ct.) 122 F. R. 246; Baton Rouge, etc., v. George, (5th Ct.) 128 F. R. 914.

²³ The Glendale, 81 F. R. 633; The Sappho, 94 F. R. 545; The Frey, 106 F. R. 319; Lazarus v. Barber, 136 F. R. 534.

²⁴ Panama v. Napier, 61 F. R. 408; The Elton, 83 F. R. 519; The George L. Garlick, 107 F. R. 542; Wilder's S. S. Co. v. Low, 112 F. R. 161; Appeal of Cahill, 124 F. R. 63; La Bourgogne, 144 F. R. 781.

²⁵ The New York, 108 F. R. 102; Paauhua v. Palapala, 127 F. R. 920.

²⁶ The Eliza Lines, 132 F. R. 242; C. C. A. Rule 11.

²⁷ The F. W. Vosburg, 50 F. R. 239; The Atlantis, 119 F. R. 568; Leary v. Talbot, 151 F. R. 355; Vaccarezze v. Molasses, 161 F. R. 543.

below, yet it finally altered this holding in the case of *Munson Steamship Line v. Miramar S. S. Co.*²⁸ In this case, after a careful review of conflicting decisions, the court reached the conclusion that the Circuit Courts of Appeal stand, with relation to the District Courts, exactly as the Supreme Court before the Act of 1875²⁹ stood in relation to the Circuit Courts, or as the Circuit Courts stood in relation to the District Courts before the establishment of the Circuit Courts of Appeal, and hence, that an admiralty appeal from the District Court to the Circuit Court of Appeals is still a new trial, in which the appellate court may reverse the decree below in favor of one who has not appealed. Though the case does not refer to the point, it follows inevitably from it that the court above is not bound by the decision of the court below on a disputed question of fact.³⁰

This restores, to the Second Circuit at least, the former character of admiralty appeals. No other form of appeal can be satisfactory in the admiralty. Many a heavy collision case is *terra firma* as to the rules of law involved, but a bog of uncertainty as to its facts. To say that these may not be re-examined and that the decision of facts by the court of first instance is final and will not be disturbed when the evidence is conflicting, as it always is in, for instance, a collision case, is to give to a single judge the power of disposing once for all of the whole matter, and to make the District Court, and not the Circuit Court of Appeals, the court of final decision in admiralty.

§ 568. An Appeal must be from a Final Decree.

An appeal to the Circuit Court of Appeals can only be from a "final decision," i. e., a final decree of the District Court.³¹ It is of great importance to the due administration of justice, that causes should not be carried up in fragments, upon successive appeals, which would occasion very great delays and oppressive expenses. It was to prevent such a course that Congress limited the right of appeal to appeals from final decrees only. The final decree is not that which decides upon the substantial merits of the suit, but that which completes the decretal action of the court in the cause;³² and an appeal will bring

²⁸ *Munson Steamship Line v. Miramar Steamship Co.*, 167 F. R. 960; see *The Havilah*, 48 F. R. 684; *The Hesper*, 122 U. S. 256.

²⁹ Act of February 16, 1875, 18 Stat. p. 315.

³⁰ See *City of Cleveland v. Chisholm*, 90 F. R. 431; *Gilchrist v. Chicago Ins. Co.*, 104 F. R. 566.

³¹ Act of 1891, § 6; 26 Stat. at L. p. 826. Final decree, what is, see *ante*, § 466.

³² *Ante*, § 466.

up for review, at once, all that the court has done in the cause, so far as it may injuriously affect the appellants. The appeal, therefore, though from the final decree, gives opportunity for appeal from any error in the orders, decrees and proceedings of the District Court.³³

If, therefore, there remain to be made any order, for costs, for confirmation of a report, for distribution, or other order which is but a consequence of the decree on the merits, the appeal cannot be taken before such order is entered, that is, the decree is not final till it is in a state for execution, without further action of the court below.³⁴ Matters discretionary with the trial court are not reviewable on appeal.³⁵

§ 569. No Limitation on Amount.

In admiralty cases, there is no limitation of the right of appeal because of the amount involved, but the right to appeal to the Circuit Court of Appeals is given in all cases except where an appeal lies to the Supreme Court.³⁶ No appeal lies from a decree for costs only,³⁷ unless the force of a statute or some positive rule of law is concerned.³⁸

§ 570. The Circuit Court of Appeals may stay the District Court.

Should the District Court proceed after an appeal duly taken, the Circuit Court of Appeals will, on motion of the appellant, and when circumstances require, issue an inhibition to the District Court.³⁹

For certain purposes, however, such as the obtaining of money tendered and paid into court, the District Court can act after an appeal, and the Circuit Court of Appeals has no power to interfere.⁴⁰

³³ Act of March 3, 1803; *Marine Ins. Co. v. Hodgson*, 10 U. S. (6 Cranch), 206; *Welch v. Mandeville*, 11 U. S. (7 Cranch), 152; *The Apollon*, 22 U. S. (9 Wheat.) 362; *Chirac v. Reinicker*, 24 U. S. (11 Wheat.) 280; *Brockett v. Brockett*, 43 U. S. (2 How.) 238; *The Hollen*, 1 Mason, 431; *Mordecai v. Lindsay*, 60 U. S. (19 How.) 199; *Montgomery v. Anderson*, 62 U. S. (21 How.) 386; *Dennis v. Slyfeld*, 117 F. R. 474.

³⁴ *Ante*, § 466.

³⁵ *Cape Fear Towing, etc., Co. v. Pearsall*, 90 F. R. 435; *Carroll v. Davidson*, 152 F. R. 424.

³⁶ *The Joseph B. Thomas*, 148 F. R. 762.

³⁷ *Elastic Fabrics Co. v. Smith*, 100 U. S. 110; *Paper Bag Machine Cases*, 105 U. S. 766; *Wood v. Weimar*, 104 U. S. 786; *Russell v. Farley*, 105 U. S. 433; *Du Bois v. Kirk*, 158 U. S. 58; *The Eva D. Rose*, 166 F. R. 101.

³⁸ *The City of Augusta*, 80 F. R. 297.

³⁹ *Penhallow v. Doane's Admrs.*, 3 U. S. (3 Dall.) 54; Ad. Rule 12, C. C. A.

⁴⁰ *Califarno v. McAndrews*, 51 F. R. 300.

§ 571. Time to Appeal.

No appeal to the Circuit Court of Appeals can be taken except within six months after the entry of the decree appealed from.⁴¹

The appellant may take his appeal at any time within six months, but if he wishes to stay proceedings he must take his appeal within the time of the stay allowed by the rule of the District Court, viz., ten days from the time of service of a copy of the decree on the opposite proctor, with notice of entry.⁴²

But the appellant may not desire to stay proceedings on the decree of the District Court pending the appeal. In that case he may file and serve his notice of appeal at any time within six months after the entry of the decree. The language of section 11 of the statute is that no appeal "shall be taken" except within such six months, and the language of the 1st of the Circuit Court of Appeals admiralty rules provides that an appeal "shall be taken" by filing and serving a notice of appeal: the latter expression is a construction of the words of the statute sufficient to show that, if the notice of appeal is filed and served before the six months expire, it is enough to save the appeal.

§ 572. How to Take an Appeal.

In the Second Circuit the regular method of taking an appeal is as follows. Within ten days after receiving notice of the entry of the final decree of the District Court, the appealing party must file a notice of appeal in the clerk's office of the District Court and at the same time serve a copy of the notice on his adversary. This temporarily stays execution. Within ten days after such filing and service, the appellant must file with the District Court his assignment of errors and bond for costs on appeal, and a bond to abide the event of the appeal, if he desires a stay pending appeal, and, at the same time, he must serve a copy of the assignment of errors and either a copy of the bond to abide the event, or notice that it has been put on file, together with the names and addresses of the sureties on the latter bond, and if the sureties are excepted to, he must cause them to justify. By these proceedings the District Court and the appellee have been notified of the appellant's intention to appeal, of the points on which he intends to urge his appeal, and of the fact that he has given security for the costs of the appeal, and security for payment of the District Court decree, if affirmed, in cases where the bond to abide the event of the appeal has been given.

⁴¹ 26 Stat. p. 826, sec. 11; *U. S. v. Baxter*, 10 U. S. App. 241; *The City of Naples*, 69 F. R. 794; *The New York*, 104 F. R. 561.

⁴² Dist. Rule 62.

Some of the circuits retain the forms of the petition of appeal and the citation to appellee, but neither of these is necessary in the Second Circuit. The above mentioned steps, therefore, complete for the time the proctor's work on appeal. The district clerk makes up the apostles and sends them up: the proctor has only to see that the clerk performs his duty. The clerk of the Circuit Court of Appeals prints the apostles. The proctor's work does not begin again until the apostles are filed above, and ordinarily not until they are printed. See *post*, §§ 581, 584, 585.

§ 573. Appeals on Particular Points.

The third admiralty rule of the Circuit Court of Appeals for the Second Circuit provides for a special form of appeal in case the appellant wishes a review, not of the whole case, but of some questions involved in it. In this case he must state clearly and succinctly in his notice of appeal the questions which he desires to review, and must state that he desires only to review those questions, and he is concluded by such notice. In such case the review on the appeal is to be limited to those questions, and the apostles may, by stipulation, contain only the papers and proceedings and evidence necessary to review the questions raised by the appeal.⁴³ And when the special questions have been heard by the Circuit Court of Appeals it will issue its mandate to the District Court, directing it to execute its decree or to make a new decree, according to the determination of those questions only.

§ 574. Notice of Appeal.

The notice of appeal is a notice of the appellant's intention to seek a review of the decision of the District Court, given both to the appellee and to the court from whose decision appeal is to be had, and in which court the cause still remains. It should therefore be entitled in the latter court,⁴⁴ set forth the title of the cause, and state in the ordinary form of a notice, that the libellant or claimant in the cause appeals to the Circuit Court of Appeals for that circuit, from the decree of the District Court in the cause, entered on such and such a day, and from each and every part thereof. It should be addressed both to the proctor for the other side and to the clerk of the District Court, and should be served on the proctor and filed with

⁴³ C. C. A. Ad. Rule 4.

⁴⁴ See *Church Cooperage Co. v. Pinkney*, 170 F. R. 266.

the clerk of the District Court. To be entirely regular, the notice filed with the clerk should show, by affidavit or admission of service, that it has been served upon the proctor for the appellee. In case of the special appeal spoken of in the preceding section, the notice should be as above set forth, with the additional notice that on the appeal the appellant desires to review the following questions only: which questions are then clearly and succinctly stated.

§ 575. Security for Costs.

In all cases, besides filing and serving the notice of appeal, the appellant must file in the office of the clerk of the District Court, a bond for the costs of the appeal. And such bond must be filed within ten days after filing the notice of appeal, or the appeal is deemed abandoned and the decree below may be enforced, unless a judge of the Circuit Court of Appeals otherwise orders.⁴⁵ This bond is in the sum of \$250, with sufficient surety, conditioned that the appellant shall prosecute his appeal to effect and pay the costs if the appeal is not sustained.⁴⁶ It is not absolutely required that this bond be signed by the appellant, but it is the better practice to have it so signed. No provision is made as to the sufficiency of the surety, and on cost bonds the sufficiency of the surety is usually assumed, but if there is doubt, the bond should be excepted to, and the sureties would thereupon have to justify as in the case of the bond mentioned in the next section, or if they should fail to do so, a motion to the Circuit Court of Appeals would compel sufficient surety, or dismiss the appeal for lack thereof.

§ 576. Security to stay Proceedings.

If the party appealing wishes to stay proceedings on the final decree of the court below he must not only file and serve his notice of appeal and bond for costs, but must give further security, within the time during which by the practice of the District Court the proceedings on final decrees are stayed for the purpose of appeal, unless such time is extended by order of the court.⁴⁷ That time is ten days from service of notice after entry of final decree.⁴⁸

The security which the appellant must give in such case must be, in addition to the bond for costs, a bond conditioned that he will

⁴⁵ C. C. A. Ad. Rule 2.

⁴⁶ C. C. A. Ad. Rule 2.

⁴⁷ C. C. A. Ad. Rule 2.

⁴⁸ Dist. Rule 62.

abide by and perform whatever decree may be rendered in the cause, by the Circuit Court of Appeals, or, on its mandate, by the District Court. The sum for which this bond is to be given must be such sum as shall be ordered by a judge of the District Court or of the Circuit Court of Appeals, and it must be given with sufficient surety. The appellant may give one bond for costs and another bond to stay proceedings, or he may join both securities in one bond.

The first clause of the 13th general rule of the Circuit Court of Appeals⁴⁹ provides that where property is in custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof (and this language includes a stipulation for value) are in the custody of the court, the security is to be for such an amount as will be sufficient to secure the sum recovered for the use and detention of the property and the costs of the suit, and just damages for delay, and costs and interest on the appeal. In other words, when the appellee already has good security, the appellant is required to give further security only in an amount necessary to secure the extra damages, costs and expenses which may be caused by his appeal. It is this amount which is to be fixed by the order of a district judge or a judge of the Circuit Court of Appeals.

§ 577. Justification of Sureties.

The bond must be filed in the office of the clerk of the District Court, and the appellant must give notice of such filing and of the names and residences of the sureties; the appellee may within two days thereafter except to the sureties, whereupon they must justify on notice within two days thereafter.⁵⁰ The rule does not say before whom the two sureties must justify, but presumably before the judge of the District Court. If the sureties fail to justify, it might be held that sufficient surety within the 1st section of the 2d admiralty rule had not been given, and that the appeal was therefore to be deemed abandoned. But if there were reasons for the failure of the sureties to justify, the abandonment of the appeal can be prevented by an order of a judge of the Circuit Court of Appeals, as the same rule provides. The ordinary practice is to satisfy the proctor for the appellee of the sufficiency of the sureties by proof sufficient to obtain his approval of the bond. With his approval the bond is deemed sufficient for all purposes, and the sureties need not justify.

⁴⁹ The 13th General C. C. A. Rule is not specified as an Admiralty Rule, but as the rule mentions "admiralty process," it must be held applicable to admiralty causes.

⁵⁰ C. C. A. Ad. Rule 2.

§ 578. The Assignment of Errors.

The 11th general rule of the Circuit Court of Appeals provides that the appellant shall file with the clerk of the court below, with his petition for the appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged, and that no appeal shall be allowed until such assignment of errors shall have been filed.

This rule applies to admiralty appeals as well as to writs of error at common law. In many cases, it is a sufficient assignment of error to allege simply that the court erred in making such and such a decree, e. g., in dismissing the libel, or in entering a decree for the libellant in a named service.⁵¹ But where the District Court has discussed the case in its opinion, and has made definite findings of fact or conclusions of law thereon, which the appellant deems erroneous, error should be specifically assigned to each of the findings and conclusions alleged to be erroneous. It has been held that without assignment of error the appellate court will not consider an alleged error,⁵² but, in the Second Circuit at least, where it is held that an appeal is a new trial,⁵³ it is clear that the Circuit Court of Appeals may notice errors not assigned. The assignments of error should be entitled in the District Court, not in the Circuit Court of Appeals.⁵⁴

§ 579. Petition of Appeal.

No petition of appeal is required in the Second Circuit. The former practice on appeals provided for the filing of a petition of appeal which followed the notice of appeal, and which was an extended narration of the commencement, nature and progress of the suit, up to the decision of the District Court, followed by general allegations of the wrongfulness of such decision. The only hint that such a paper is still necessary is found in Rule 11 of the general rules of the Circuit Court of Appeals, which says that the appellant shall file the assignment of errors "with his petition for the appeal." In the Southern

⁵¹ This practice is to some extent disapproved; See *The Wyandotte*, 145 F. R. 321; *The Nachez*, 78 F. R. 183.

⁵² *Coulliette v. Thomason*, 50 F. R. 787; *Brauer v. La Comp, etc.*, 66 F. R. 776; *Towboat No. 1*, 74 F. R. 906; *The Philadelphia*, 75 F. R. 684; *Chicago Ins. Co. v. Graham, etc., Co.*, 108 F. R. 271. Unless in case of seaman's wages; *The Chattahoochee*, 74 F. R. 899. Additional assignments may, on cause shown, be filed in the Circuit Court of Appeals; *Cory v. Penco*, 76 F. R. 997.

⁵³ *Munson S. S. Line v. Miramar S. S. Co.*, 167 F. R. 960.

⁵⁴ *Church Cooperage Co. v. Pinkney*, 170 F. R. 266.

District of New York this is taken to refer to the notice of appeal, and the filing of a separate petition of appeal has fallen utterly into disuse. In fact, it is not provided for at all in the admiralty rules of the Circuit Court of Appeals. And with the requirement that an appellant in admiralty shall file an assignment of errors the reason for filing a petition of appeal vanished entirely, for the two served the same purpose, and the petition was much the more cumbersome. It is understood that the petition is still used in some circuits, but this work is not supposed to cover the practice of other circuits than the Second Circuit.

§ 580. Citation.

No citation is required in the Second Circuit on appeals to the Circuit Court of Appeals. It is a matter of doubt whether under the statute any citation is required on an admiralty appeal to the Circuit Court of Appeals. The 11th section of the Act of 1891 provides that "all provisions of law now in force regulating the methods and system of review through appeals or writs of error, shall regulate the methods and system of appeals and writs of error provided for in this act in respect to the Circuit Court of Appeals." But there were two systems of review then in force; one system under which the decisions of the District Courts were reviewed by the Circuit Courts, in which no citation was necessary; and another system under which the decisions of the Circuit Courts were reviewed by the Supreme Court, in which a citation was required. The act did not specify which one of these two methods should be used in appealing from the District Court to the new Circuit Court of Appeals, and it was, therefore, a question whether, in order to make such an appeal valid, the system of appeals to the Supreme Court of the United States from the decrees of the Circuit Court must be followed or the other. Citations are referred to in the general rules of the Circuit Courts of Appeal,⁵⁵ but are not made obligatory. The citation properly belongs to the realm of writs of error, where its function is to summon the appellee to respond to the writ, which function, on appeals, is served by the notice of appeal, and when the latter is required, the citation seems superfluous. As said above, it is never used in the Second Circuit, except on appeals directly from the District to the Supreme Court. *Ante*, § 563. The case of *Peace River Phosphate Co. v. Edwards*,⁵⁶ shows

⁵⁵ C. C. A. Rules 14, 16.

⁵⁶ *Peace River Phosphate Co. v. Edwards*, 70 F. R. 728.

that it is considered essential in the Fifth Circuit on appeals to the Circuit Court of Appeals.

When employed, the citation is to be issued by the clerk in the name of a judge of the Circuit Court of Appeals or a District judge; on appeals from the District Court to the Supreme Court it should be issued in the name of a justice of the Supreme Court, or a District judge. It is addressed to the appellee and a copy of it must be served and the original filed in the clerk's office of the District Court to be returned with the apostles. The practice is to have the bond approved and the citation signed by the same judge.⁵⁷

§ 581. The Apostles, or Record on Appeal.

All this being done, the next step is the preparation of the record of the proceedings, which is to be sent up to the appellate court. This record, sent up from the lower to the higher court, is called the Apostles, from the Greek *αποστέλλειν*, to "send away."⁵⁸ It is usually made up by the clerk of the District Court, and must be certified by him, before it can be filed in the appellate court.

In other circuits than the Second Circuit the record is made up as is provided for in admiralty rule 52 of the Supreme Court, and unless it is so made up, the Court of Appeals is not required to review the testimony.⁵⁹ In the Second Circuit there is a special rule (C. C. A. Ad. Rule 4), which provides what the apostles shall contain, as follows:

(1) A caption exhibiting the proper style of the court and the title of the cause, and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who have become parties before the appeal, if any change has taken place; the several dates when the respective pleadings were filed, whether or not the defendant was arrested, or bail taken, or property attached, or arrested, and if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question

⁵⁷ Freeman v. Clay, 48 F. R. 849; 2 U. S. App. 151; U. S. v. Hopewell, 51 F. R. 798.

⁵⁸ Consett. Prac. 192; 2 Browne's Civil Law, 438. And a party may have certiorari to the clerk of the District Court if the record is improperly made up; The Margaret B. Roper, 106 F. R. 740.

⁵⁹ The Alijandro, 56 F. R. 621.

was referred to a commissioner or commissioners, and if so, the result of the proceedings and report thereon ; the date of the entry of the interlocutory and final decrees ; and the date when the notice of appeal was filed :

- (2) All the pleadings, with the exhibits annexed thereto :
- (3) All the testimony and other proof adduced in the cause :
- (4) The interlocutory decree and any order of the court which appellant may desire to have reviewed on the appeal :
- (5) Any report of a commissioner or commissioners to which exception may have been taken, with the order or orders of the court respecting the same, and the exceptions to the report, and so much of the testimony taken in the proceeding as may be necessary to a review of the exceptions :
- (6) All opinions of the court, whether upon interlocutory questions or finally deciding the cause :⁶⁰
- (7) The final decree, and the notice of appeal ; and
- (8) The assignments of error.

The caption for the apostles, which is to contain a brief history of the proceedings in the cause as specified in the 1st section of the rule, should be prepared by the appellant and furnished to the clerk of the District Court, who is to attach to it the other papers mentioned in the rule.⁶¹

If a special appeal is taken, as provided for in admiralty rule three of the Circuit Court of Appeals, the parties may stipulate as to the papers, proceeding and evidence which are to go into the apostles. If the parties cannot so stipulate, the clerk must make up the apostles in the form above set forth.

§ 582. The Appellee must Appear.

The apostles must be filed in the office of the clerk of the Circuit Court of Appeals within thirty days after the giving of the notice of appeal. Notice of the filing should be served on the proctor of the appellee. The appellee must cause his appearance to be entered within ten days thereafter, or the appellant may proceed *ex parte* in the cause and have such decree as the nature of the case may demand.⁶²

⁶⁰ The Circuit Court of Appeals for the Second Circuit announced, in May, 1893, that provision (6) must be strictly complied with.

⁶¹ It is desirable to have the record made up so that it will show that witnesses were examined in the presence of the District Judge; *The Gypsum Prince*, 67 F. R. 612.

⁶² C. C. A. Ad. Rules 5 and 6. The time, specified in the Admiralty Rules of the Circuit Court of Appeals, for any proceeding, may be extended by order of a judge of that court. C. C. A. Ad. Rule 17.

§ 583. New Pleadings and New Evidence.

It was the former practice of the admiralty that, on an appeal, new allegations might be made and new evidence offered, if desired, as of course, and without special leave of court. Admiralty rule 7 of the Circuit Court of Appeals for the Second Circuit provides that, upon sufficient cause shown, that court or any judge thereof may allow either appellant or appellee to make new allegations, or pray different relief, or interpose a different defence, or take new proofs. But notwithstanding this rule, the practice of the Second Circuit requires good cause to be shown why the testimony desired was not taken below, and should now be allowed to be taken. In this the practice of all the circuits seemingly is the same.⁶³ But when substantial justice requires it, further proofs will be received.⁶⁴

In the Second Circuit, the application for leave to make new allegations or pray for a different relief, or to take new proofs must be made within fifteen days after the filing of the apostles and upon at least four days' notice to the adverse party.⁶⁵ If a party, therefore, desires to make such application, it behooves him to inform himself of the time of filing of the apostles. If leave is granted to serve a new pleading, it must be served within ten days after the entry of the order granting permission: and if the new pleading be a libel, the answer thereto must be served within twenty days after service of the libel.⁶⁶ The rule does not provide for filing such papers, but, in accordance with the general admiralty practice, the originals should be filed with the clerk of the Circuit Court of Appeals, and copies served.

If leave is granted to take new testimony, it must be taken and filed within thirty days, and the opposing party has twenty days thereafter to take counter testimony.⁶⁷ The evidence is taken by deposition and the periods of time mentioned above may be extended by order of a judge of the court.⁶⁸

⁶³ *The Sirius*, 54 F. R. 188; *The Lurline*, 57 F. R. 398; *The Philadelphian*, 60 F. R. 423; *The Glide*, 68 F. R. 719; *The McDonald*, 112 F. R. 681; *Pacific Steam Whaling Co. v. Grismore*, 117 F. R. 68; *Banking Co. v. Cargo of the Afton*, 134 F. R. 727.

⁶⁴ *The Philadelphian*, 60 F. R. 423; *Red River Line v. Cheatham*, 60 F. R. 517; see *Smith v. E. E. Wood T. Co.*, 103 F. R. 685; *The Carbonero*, 106 F. R. 329.

⁶⁵ C. C. A. Ad. Rule 7.

⁶⁶ C. C. A. Ad. Rule 8.

⁶⁷ C. C. A. Ad. Rule 8.

⁶⁸ C. C. A. Ad. Rules 9 and 17.

§ 584. Printing the Papers.

The clerk of the Circuit Court of Appeals prints the papers to be used on the appeal, viz.: the apostles and any new pleadings or testimony, furnishes three copies to each party at least thirty days before the argument,⁶⁹ and docket the case as soon as the printing of the apostles is completed.⁷⁰ If the record is incomplete, a party may have a writ of certiorari for diminution, or correction of the record.⁷¹

§ 585. Briefs and Argument.

At least twenty days before the appeal is called for argument, the appellant must file with the clerk ten copies of his brief, and serve two copies of it on the proctor or counsel of the appellee. The brief must contain in the order here set forth;⁷²

(1) A statement of the nature of the appeal, the court from which the appeal is taken, and a concise abstract or statement of the case, presenting succinctly the questions involved, and the manner in which they were raised;

(2) If the pleadings have been amended in the Circuit Court of Appeals, or new proofs have been taken, it must be stated what amendments have been made, and in what respect the new proofs have changed, or tended to change the case as made in the court below;

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the folios of the record or to the numbers of the questions, and the authorities relied upon in support of each point.⁷³

The appellee must file with the clerk ten copies of his brief, and serve two copies on the proctor or counsel of the appellant, at least ten days before the case is called for hearing. His brief should be of a like character with that required of the appellant.

The appellant is entitled to open and conclude the argument of

⁶⁹ Adm. Rule C. C. A. 10; Gen. Rule 23.

⁷⁰ Adm. Rule C. C. A. 15; Gen. Rule 25.

⁷¹ C. C. A. Rule 18; *The Margaret B. Roper*, 106 F. R. 740.

⁷² C. C. A. Ad. Rule 15.

⁷³ Adm. Rule C. C. A. 26 provides that briefs must be printed on a page eleven inches long by seven inches wide, and must have a margin of at least two inches in width. Rule 37 requires that citations from the "Federal Cases" must be accompanied by the citation of the original report of the case, and if the case is not reported elsewhere than in the Federal Cases, the fact must be so stated.

the appeal and but one hour's oral argument to each side is allowed in admiralty appeals,⁷⁴ except by special direction of the court.

§ 586. The Decree—Costs. I.

The appellate court has control of the whole cause to direct such a decree to be made and such proceedings taken as it thinks proper. And the question of the costs in the cause is therefore to be disposed of as an original question.⁷⁵

Section 968 of the Revised Statutes provides that "where, in a Circuit Court, a libellant upon his own appeal recovers less than the sum or value of three hundred dollars exclusive of costs, he shall not be allowed, but at the discretion of the court, may be adjudged to pay costs."⁷⁶ If section 968 of the Revised Statutes is to be considered to be a provision of law "*regulating methods and system of review*," (See C. C. A. Act of 1891, § 11) a libellant could not recover costs on his own appeal, unless he recovered at least three hundred dollars damages.

§ 587. Costs on Appeal. II—Interest—Damages.

Costs follow, in general, the decree of affirmance or reversal, but may be disallowed by the court.⁷⁷ Where there is a dismissal for lack of jurisdiction, costs are not allowed. No costs are allowed to or against the United States.⁷⁸ When both parties appeal and the decree is affirmed, no costs are allowed.⁷⁹ When appellant reduces the decree of the District Court, the appellee bears the costs of the appellate court.⁸⁰ A schedule of costs in the Circuit Court of Appeals will be found in 169 U. S., p. 740. The Fee Bill provided for a proctor's fee of five dollars for services rendered in cases removed from a District to a Circuit Court by writ of error or appeal. Cases are no longer appealed to the Circuit Court, and it is considered that this provision is obsolete. In the Second Circuit it is never taxed, its place being

⁷⁴ C. C. A. Rule 25.

⁷⁵ *Pettie v. The Boston Towboat Co.*, 49 F. R. 464; 1 U. S. App. p. 57. Where cross appeals are heard together on the same evidence but one docket fee is allowed; *The Rabboni*, 84 F. R. 681.

⁷⁶ See *The Cassius*, 41 F. R. 367.

⁷⁷ C. C. A. Rule 31.

⁷⁸ *Id.*

⁷⁹ *The William Cox*, 9 F. R. 672.

⁸⁰ *Carr v. Austin*, 14 F. R. 419; *Ross v. Southern Co.*, 41 F. R. 152; see *The Columbia*, 25 F. R. 844; *The C. P. Raymond*, 36 F. R. 336; *The Dentz*, 29 F. R. 525; *Western A. Co. v. Southwestern T. Co.*, 68 F. R. 923.

taken by the docket fee of twenty dollars, provided for in the Supreme Court schedule of costs on appeal to the Circuit Court of Appeals. In addition to the items set forth in the schedule of costs above referred to, the expense of printing the apostles is included in the bill of costs if the decree below is reversed⁸¹ and a reasonable charge for printing briefs is allowed.⁸²

Interest, and in special cases, damages may be awarded, if specially directed by the court.⁸³ But a party who appeals from a decree in his favor is not entitled on an affirmance to interest pending the appeal.⁸⁴ Where an appeal is held to be a new trial in the Circuit Court of Appeals, interest in cases of affirmance should not run on the amount of the decree of the District Court, but on the amount of the damages from the time they originated down to the time of the decree of the District Court, on mandate after affirmance. Otherwise interest would be running on interest, which is inadmissible.

§ 588. Proceedings on Decision by Appellate Court.

In the Second Circuit there is no necessity for a motion to the Circuit Court of Appeals for the issuance of its mandate. Rule 36 of the general rules provides that ten days after announcing its decision the court itself will enter the order or decree on its decision, and that the clerk of the court will thereupon tax the costs and issue the mandate. During that ten days, however, the parties are at liberty to propose any form of order or mandate which they may desire to have entered, and the court will consider it, though it will not be bound by it. The proposed form of order or decree should be filed with the clerk. Within the same period the parties may file with the clerk their proposed bills of costs with proof of service of them upon the opposing attorneys. The clerk, *ex parte*, taxes the proper costs and inserts them in the mandate which is issued by him.

When the mandate is issued it is delivered to the proctor for the successful party, who prepares the final decree in accordance therewith, and enters the same in the District Court,⁸⁵ filing the mandate therein

⁸¹ Hake v. Brown, 44 F. R. 734.

⁸² C. C. A. Ad. Rule 15, sec. 3.

⁸³ C. C. A. Rule 30; The J. & J. McCarthy, 61 F. R. 516; Hagerman v. Moran, 75 F. R. 97; The Glenochil, 128 F. R. 963.

⁸⁴ The Express, 59 F. R. 476; The Banes, 147 F. R. 192.

⁸⁵ A point left open by the mandate of the Supreme Court may be considered and decided by the District Court, and from such new decision of that court, an appeal again lies to the Circuit Court of Appeals; Ex parte Union Steamboat Co., 178 U. S. 317; The New York, 104 F. R. 561.

at the same time. If the decree is not performed, resort may be had to the bond given on the appeal, or to the stipulators originally bound in the suit.

§ 589. Summary of Practice Under the Admiralty Rules of the Circuit Court of Appeals for the Second Circuit.

Prepare notice of appeal, either general under Rule 1, or special under Rule 3. Serve same and file with the District Court. Prepare assignment of errors and file same in the District Court. Agree with appellee on amount of the bond to be given on appeal, or apply to the judge who made the decree appealed from, or to a judge of the Circuit Court of Appeals, to fix the amount of the bond. Prepare bond in amount agreed upon or fixed by judge, conditioned as required by Ad. Rule 2, sec. 2, and in the additional sum of \$250 for costs, conditioned as required by Ad. Rule 2, sec. 1, and have it executed and approved by appellee, or by the judge. File the bond with the clerk of the District Court, and if appellee has not approved the bond, give notice of the filing and of the names and residences of the sureties to the proctor for the appellee. If the appellee, within two days gives notice that he excepts to the sureties, give him notice to attend before the clerk of the District Court at a time and place named for the justification of the sureties. See that the sureties justify, or, if they fail to do so, obtain an order giving the appellant time to furnish a new bond. If appellee has approved the bond, notice of the names and residences of the sureties and their justification is unnecessary.

Draw caption for apostles as required by Ad. Rule 4 and deliver it to the clerk of the District Court. In case of a special appeal under Ad. Rule 3 draw stipulation as to necessary papers, proceedings and evidence and file it, signed by the proctors for both parties, with the district clerk.

Obtain, within thirty days after serving the notice of the appeal, the apostles, certified by the clerk of the District Court, and file them with the clerk of the Circuit Court of Appeals. If the thirty days period is too short, obtain from a judge of the Circuit Court of Appeals an order extending the time, and file it with the clerk of the Circuit Court of Appeals. Serve notice of the filing of the apostles on proctor for appellee, who must within ten days thereafter enter his appearance in the appellate court.

Print the brief upon a page eleven inches long by seven inches wide, and with a margin at least two inches wide, observing the requirements of Rule 15 as to the subject matter and order thereof. When citation

is made of a case in the Federal Cases, give also the original citation: if the case is not reported elsewhere than in the Federal Cases, state that fact.

Twenty days before argument, if appellant, file ten copies of the brief, and serve two copies. If appellee, do the same ten days before the argument is called on. On hearing, if more than one hour is desired to present the case, apply for additional time before the argument is begun.

Within ten days after decision of the Circuit Court of Appeals, make out bill of disbursements in latter court, serve a copy, and file the original with clerk of the Circuit Court of Appeals with proof of service. If it is deemed desirable to have the final decree of the Circuit Court of Appeals in any particular form, prepare such form and file it with the clerk within the ten days. Receive the mandate when issued by the clerk, prepare decree thereon and in accordance therewith, give notice of entry, and at the time appointed, file both the mandate and the proposed decree with the District Court.

CHAPTER XXXVII.

CERTIFICATION TO AND CERTIORARI FROM THE SUPREME COURT.

§ 590. Certification to the Supreme Court.

The sixth section of the Act of March 3, 1891 (26 Stat. 826), provides that in certain classes of cases, admiralty cases being among them, the Circuit Court of Appeals may at any time, when the subject is within its appellate jurisdiction, certify to the Supreme Court any questions or propositions of law concerning which it desires the instruction of that court for its proper decision: and that thereupon the Supreme Court may either give its instructions on the questions and propositions certified to it, which shall be binding upon the Circuit Court of Appeals in such case, or it may require that the whole record and cause be sent up to it for its consideration, and that thereupon it shall decide the whole matter in controversy in the same manner as if it had been brought there for review by appeal.

Rule 37 of the Supreme Court refers to this provision of the statute. It provides that when the Circuit Court of Appeals shall so certify a question, the certificate shall contain a proper statement of the facts on which such question arises: and also, that, if application is thereupon made to the Supreme Court that the whole record and cause be sent up to it for its consideration, the party making such application shall, as a part thereof, furnish the Supreme Court with a certified copy of the whole record.

Where a Circuit Court of Appeals, therefore, desires the instruction of the Supreme Court for its proper decision in a case before it, the court either indicates its question to the proctors and calls upon them to formulate the question and the necessary statement, which it then settles as it would an order, or the court itself formulates the question, and attaches thereto its statement of the facts on which the question or proposition of law arises. The question and statement are filed in the clerk's office of the Circuit Court of Appeals, and are by the clerk of that court,¹ certified and forwarded to the clerk of the Supreme Court, who prints the same, and it forms the whole record on

¹ After his fees are paid: see C. C. A. General Rule 31, sec. 6.

which the matter is heard by the Supreme Court. The certified question goes on the regular docket of the latter court like a regular appeal. No citation or notice of hearing is given by any party, but the proctors are supposed to observe the case on the calendar of the Supreme Court, and file briefs and attend and argue as in ordinary cases. When either party desires that the whole record shall accompany the question certified, such party may move the Supreme Court for an order requiring the whole record to be sent up. Such motion is founded on a petition, showing grounds for the granting of the application: and notice of the presentation of the petition must be given to the other side, who may oppose the application. The petition must be accompanied by one certified and nine uncertified copies of the record, and, if the application is granted, twenty-five copies in all of the record are required for the hearing on the merits, and if these are not obtainable from the copies printed for the Circuit Court of Appeals, the record will be reprinted by the clerk of the Supreme Court. The procedure on this application is similar to the procedure on application for writ of certiorari, *post*, § 593.

§ 591. Certiorari From the Supreme Court.

The sixth section of the Act of March 3, 1891, which created the Circuits Courts of Appeal, provided that in any case in which, by that section, the decree of the Circuit Court of Appeals is made final, it shall be competent for the Supreme Court to require by certiorari or otherwise such case to be certified for its review and determination, with the same power and authority in the case as if it had been carried by appeal to the Supreme Court. This includes admiralty causes.

The Supreme Court has held that it is only when questions of great gravity and importance are involved that this power of the Supreme Court can be invoked.² But it has also held that the right to issue the writ extends to all cases in which the decree of the Circuit Court of Appeals is by the Act made final, and that this right may be exercised at any time during the pendency of the suit in the Circuit Court of Appeals.³ The time when one would naturally apply for the writ, however, would be after an adverse decision of the Circuit Court of Appeals and before it issues its mandate thereon to the District Court. If the Circuit Court of Appeals is informed of the application

² *In re Lau Ow Ben*, 141 U. S. 583; *Amer. Const. Co. v. Jacksonville R. Co.*, 148 U. S. 372.

³ *Forsythe v. Mammond*, 166 U. S. 506; *Amer. Const. Co. v. Jacksonville R. Co.*, 148 U. S. 372; *In re Lau Ow Ben*, 141 U. S. 583.

for a writ of certiorari from the Supreme Court, it will usually withhold its own mandate until that application has been decided.

§ 592. Application for the Writ—Docketing.⁴

The petitioner must prepare a petition, setting forth the facts of the case, its gravity and importance and the reasons on account of which he thinks himself entitled to the issuing of a writ. The original petition need not be printed, but must be signed and sworn to by the petitioner and signed by counsel. It must be forwarded to the clerk of the Supreme Court, accompanied by a copy of the transcript of the record in the Circuit Court of Appeals, which record may be one of those printed for the use of the Circuit Court of Appeals,⁵ with the proceedings in the Circuit Court of Appeals annexed thereto, or printed under a separate cover. The whole record must be certified by the clerk of the Circuit Court of Appeals.⁶ There must also be forwarded to the clerk an appearance of counsel for the petitioner, signed by a member of the Supreme Court bar. There must also be deposited with the clerk the sum of twenty-five dollars on account of costs. The clerk of the Supreme Court then docket the petition.

§ 593. Application for the Writ—Submission.⁷

Petitioner must then give notice to his adversary, and to the clerk, of the date on which he will submit the petition, and must serve copies of the petition and of his brief to be submitted in support thereof. Monday is motion day in the Supreme Court, and some Monday must be fixed upon as the day on which the petition will be submitted, and about two weeks' notice must be given. The adversary may file a brief in opposition to the prayer of the petition.

Before he is entitled to submit the petition, however, the petitioner must further file with the clerk (1) proof of the service upon counsel for respondent of the petition, brief and notice of the date fixed for submission; (2) twenty-five printed copies of the petition; (3) twenty-five printed copies of the brief in support of the petition, which brief must be printed on unglazed paper, and in type not smaller than small pica;⁸ (4) at least nine uncertified copies of the record, which must contain all the proceedings in the Circuit Court of Appeals.

⁴ *Vide* Instructions for Applications for Writs of Certiorari, 210 U. S. 503.

⁵ *Toledo, etc., R. Co. The Continental T. Co.*, 176 U. S. 219.

⁶ Sup. Ct. Rule 37, (3) and the fees of the clerk of the Circuit Court of Appeals must first be paid. See C. C. A. Rule 31, sec. 6.

⁷ *Vide* Instructions for Applications for Writs of Certiorari, 210 U. S. 503.

⁸ Sup. Ct. Rule 31: *R. R. Co. v. Jacobson*, 179 U. S. 294.

All of these papers must be filed not later than the Saturday preceding the Monday fixed for the submission. If nine copies of the record as used in the Circuit Court of Appeals cannot be obtained, and the record must be reprinted, the reprinting must be done under the supervision of the clerk of the Supreme Court, who will then print fifty copies.

On the day fixed for the submission, the matter must be called up and submitted in open court by counsel for the petitioner, or by some other counsel in his behalf. No oral argument is permitted. The personal attendance in court of counsel for the respondent to submit his brief in opposition is not required, but the brief may be filed beforehand with the clerk.

§ 594. Proceedings if the Writ is Granted.

If the writ of certiorari is granted the case goes on the general calendar of the Supreme Court and is heard in due course in all respects as though it had come to the court by an appeal as matter of right, and extra copies of the record, enough to bring the whole number up to twenty-five must be submitted, or the clerk will reprint the whole record. After the decision by the Supreme Court the mandate issues as of course to the District Court, after thirty days from the day the judgment or decree is entered, and all proceedings on the issuing and filing of the mandate are similar to the same proceedings on a decision of the Circuit Court of Appeals.

CHAPTER XXXVIII.

PROHIBITION AND MANDAMUS.

§ 595. Prohibition and Mandamus.

The use of these writs in admiralty differs no whit from their use in other classes of cases. If the District Court entertains an admiralty cause of which it has no jurisdiction, the defendant may apply to the Supreme Court for a writ of prohibition, that court having by statute the power to issue the writ in such cases:¹ the obtaining of the writ is a matter of right in cases where the District Court clearly had no jurisdiction of the cause originally, and where defendant has taken prompt objection, and where he has no other remedy.² The decision of the Supreme Court is confined to the question of the jurisdiction of the District Court.³ Similarly, a writ of mandamus may be obtained when the District Court refuses to perform its official duties, but the writ cannot be issued to compel the lower court to decide a matter in a particular way, nor can it be used to perform the office of an appeal, even if no appeal is given by law.⁴

§ 596. Practice to obtain Prohibition or Mandamus.

The practice in each case is as follows: The defendant presents a petition to the Supreme Court, in which he asks for the issuing of the writ. He must attach to his petition a copy of the record of the cause in the District Court. The application should be made before decree in the District Court, and while the proceeding in that court is still pending.⁵ The petitioner presents the petition to the Supreme Court, with such *ex parte* suggestions in print as he sees fit, and moves for leave to file the petition and for an order to show cause why the

¹ Rev. Stat. § 688.

² In re Rice, 155 U. S. 396; In re New York & Porto Rico S. S. Co., 155 U. S. 523.

³ Ex parte Easton, 95 U. S. 68; Ex parte Gordon, 104 U. S. 515; Ex parte Ferry Co., 104 U. S. 519; Ex parte Hagar, 104 U. S. 520; In re Cooper, 138 U. S. 404; In re Fassett, 142 U. S. 479; In re Morrison, 147 U. S. 14.

⁴ In re Rice, 155 U. S. 396; Ex parte Union Steamboat Co., 178 U. S. 317.

⁵ U. S. v. Hoffman, 71 U. S. (4 Wall.) 158. But see Smith v. Whitney, 116 U. S. 167, and In re Cooper, 143 U. S. 475, 495.

prayer of the petition should not be granted. The court examines the petition, and if it sees sufficient cause, it orders a rule to be entered, calling upon the judge of the District Court in question to show cause on a day named why the writ should not be granted.

§ 597. Return to Rule and Argument.

The rule being granted and served, the judge of the District Court makes such return thereto as he is advised, or he may make no return, deeming the case sufficiently set forth in the petition. On the return day of the order the parties in the cause in the District Court are permitted to appear by counsel and present such arguments as they see fit. The case is heard in the Supreme Court on the calendar of original cases and not on the general calendar of appeals.

§ 598. Inhibition and Mandamus from the Circuit Court of Appeals.

The admiralty rules of the Circuit Court of Appeals for the Second Circuit provide for a writ of inhibition by the appellate court to stay proceedings in the court below when circumstances require,⁶ and for a mandamus to compel a return of the apostles when unreasonably delayed by the clerk or court below.⁷ This writ of inhibition is different entirely from the prohibition of the Supreme Court, which latter goes to the jurisdiction of the District Court, a matter which, by itself, may not be reviewed by the Circuit Court of Appeals.⁸ Inhibition might be used where the District Court insisted upon going on with a cause, when a commission to take testimony had been issued and had not been returned: or where the court insisted upon selling a vessel, notwithstanding the offer of security which the petitioner thought sufficient: or in other cases which might be suggested. No instance of the issuing of such a writ has been found. The writ of mandamus is, by the terms of the rule, confined to cases where the return of the apostles is unreasonably delayed.

The practice would be to present to the Circuit Court of Appeals, on its motion day, a verified petition setting forth the facts, due notice of the presentation of which had been given to the District Court or its clerk, and to the proctor for the opposite party in the cause.

⁶ C. C. A. Ad. Rule 12.

⁷ C. C. A. Ad. Rule 13.

⁸ *Ante*, § 562.

CHAPTER XXXIX.

ADMIRALTY AND MARITIME CRIMES.

§ 599. Crimes.

The grant in the constitution of judicial power to the government of the United States in all cases of admiralty and maritime jurisdiction, is without limitation, and, of course, embraces criminal, as well as civil cases. It is under this grant alone, that the federal government has the right to punish a large class of offences, whose punishment was provided for in the acts of Congress in relation to crimes and offences on the high seas. In those acts, the various offences were not classed or described as admiralty cases, but they were indiscriminately arranged with other descriptions of crimes subject to the federal jurisdiction. They will be found in the Crimes Acts of 1790, of 1804, of 1820, of 1825, and of 1835, in various sections, providing for the punishment of crimes and offences committed "on the high seas, or in any arm of the sea, or in any river, harbor, creek, basin or bay, or in any other waters within the admiralty and maritime jurisdiction of the United States." They were later inserted in the Revised Statutes at § 5339-5391, and are now embraced in chapters eleven and twelve of the Act of March 4, 1909, codifying, revising and amending the penal laws of the United States. 35 Stat. p. 1088 *et seq.* The power of the Federal Government to punish these offences is derived from the admiralty and maritime grant in the constitution; and of all of them which are not capital, the District Court has jurisdiction.¹ If committed within any state, the trial must be in a district of that state; and if upon the high seas, out of a district, then in the district where the offender is apprehended, or into which he may be first brought.²

§ 600. Constitutional Provisions.

Under the general provision that, in admiralty and maritime cases, the mode of proceeding should be according to the usages of courts of admiralty, the trial of maritime offences must have been according to

¹ Rev. Stat. § 563.

² Const. Art. 3, § 2, and 6th Amendment; Rev. Stat. § 730; *vide* The U. S. v. Wilson, 3 Blatchf. 435; The U. S. v. Bird, Sprague, 299.

the usage of admiralty courts,³ had not the constitution and amendments thereto otherwise provided:

“The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may, by law, have directed.”⁴

“No person shall be held to answer for a capital, or otherwise infamous crime, unless on presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in actual service, in time of war or public danger.”⁵

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district where the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.”⁶

§ 601. Crimes are Tried by a Jury.

The practical operation of these provisions has been to make the practice of the admiralty, in criminal cases, the same as the practice of the courts of common law, in like cases. The cases are none the less cases of admiralty and maritime jurisdiction, although they are tried before a jury, and, from the beginning, conducted after the manner of trials at common law, in criminal cases. The proper effect of those provisions is not, however, to adopt in such cases the practice of the state courts, but the practice must be according to the usage of admiralty courts, subject to the limitations of the constitution, the amendments, and the acts of Congress.

§ 602. Warrants and Commitments.

The powers usually exercised by justices of the peace and other magistrates in the States of issuing warrants for crimes, making preliminary examinations, and committing, are usually exercised by the United States commissioners, by virtue of § 727 of the U. S. Revised Statutes.

³ Act of May 8, 1792, § 2.

⁴ Const. Art. 3, § 2.

⁵ 5th Amendment.

⁶ 6th Amendment.

CHAPTER XL

SEAMEN'S WAGES.

§ 603. Seamen are Wards of the Admiralty.

The character of seamen and the nature of their employment has induced Congress to provide specially for the collection of their demands for wages. Seamen have always been considered as wards of the admiralty, and the wages of their perilous service have been by all nations highly favored in the law. It was the great considerations of policy and justice connected with that humble but most useful class of citizens, that induced the English common law courts to leave to the admiralty the undisputed cognizance of suits for seamen's wages, and to make those wages a lien upon the last plank of the ship. A cheap and summary mode has been, therefore, provided, which is found in Secs. 4546, 4547 of the Revised Statutes, for hearing the controversies in relation to their wages, which are usually of small absolute amount, but of very great importance to the seamen.

This procedure is a summary and cumulative remedy given to seamen, which they may pursue at their option; they are not thereby deprived of the right in the first instance to the ordinary admiralty process against a vessel,¹ in fact, they are given the right to such process without the necessity for furnishing a cost bond.

§ 604. When Seaman may Sue.

As soon as the voyage is ended, and the cargo or ballast discharged, the seaman is entitled to his wages. His right to sue for them *in personam* is perfect, the provisions of Rev. Stat. § 4546, 4547 having reference only to actions *in rem*.² If the vessel has left the port where the voyage ended, without paying the wages, or is about to go to sea again before the expiration of ten days, the seamen may proceed

¹The *William Jarvis*, Sprague, 485; *The Waverley*, 7 Biss. 465; *The M. W. Wright*, Brown Ad. 290; *Murray v. The F. B. Nimick*, 2 F. R. 86; *The Edwin Post*, 6 id. 206.

²*Freeman v. Baker*, Blatchf. & H. 372; *Francis v. Bassett*, Sprague, 16; *The Commerce*, id. 34; *Collins v. Nickerson*, id. 126; *The William Jarvis*, id. 485.

by libel *in rem* and arrest of the vessel as in other cases, all the seamen joining in the same suit, and the suit proceeds like other suits *in rem*. If the vessel has not left the port where her voyage ended, and is not immediately bound to sea, the seaman must wait ten days before he begins his suit. A stipulation for costs is not required on filing the libel, unless the claim is under fifty dollars, in which case process will not issue without the usual stipulation for costs, unless the libel be accompanied by proof that the vessel is about to leave the district,³ or by the *allocatur* of the judge, or by the certificate of a commissioner hereafter referred to.⁴ In all cases where a dispute as to the wages has arisen and ten days have elapsed from the end of the voyage the seaman may proceed by a preliminary summons before a magistrate, before whom the question of probable cause of suit is investigated.⁵

§ 605. Proceeding by Summons.

In such cases, the judge of the district, or a magistrate, or in case the former resides more than three miles from the place, any judge or justice of the peace, or United States commissioner, may issue a summons to the master of the vessel to appear before him and show cause why process should not issue against the vessel, according to the course of the admiralty, to answer for the wages. This summons should be founded on an affidavit, or a libel, showing a *prima facie* right to sue. On the return of the summons, if the master do not appear, the certificate of sufficient cause is given of course. If the master appear, he is permitted to show that the wages are paid, or otherwise satisfied or forfeited, or to settle the dispute on the spot, without further suit. If he does neither, the magistrate gives a certificate that there is sufficient cause whereon to found admiralty process, and the certificate, with the libel, is filed with the clerk, who issues the process against the vessel, and the suit proceeds in the regular manner, according to the course of the admiralty.⁶

§ 606. Other Seamen may Join in the Suit.

The suit being thus commenced, if there be any other seamen on the same voyage, having like cause of complaint, they are not compelled to repeat the preliminary proceeding, but by petition, stating

³ Dist. Ct. Rule 7.

⁴ Dist. Rule 68.

⁵ Rev. Stat. §§ 4546, 4547; Dist. Rule 68; *vide* The Merchant, Abb. Ad. 1; The Eagle, Olc. 232; The Trial, Blatchf. & H. 94.

⁶ Rev. Stat. § 4547.

their case, they are allowed to join in the suit, which is done by filing their petition and annexing it to the libel.⁷ They are then considered as original libellants, and the suit proceeds, in their collective names, to a decree. Their rights are entirely separate and independent. They are co-libellants, but not joint libellants, and they are competent witnesses for each other. Each man's case must be separately proved, and should be separately passed upon by the court, and the decree should be separate for each, especially in cases in which the amount will justify an appeal.⁸

§ 607. Other Provisions as to Suits for Wages.

By Rev. Stat., § 4251, canal boats, navigated without masts or steam, are not subject to be libelled for wages.⁹

A seaman's wages are not subject to be attached in a suit against him at common law.¹⁰

§ 608. Summary Practice in Personam in the Southern District of New York.

Rule 68 of the Rules of the District Court for the Southern District of New York sets forth a practice *in personam* similar to that described above. As the actual records of the court show that the practice under this rule is never used, no space will be devoted to it here. The provisions of the rule are plain for one who desires to proceed in that way. Since process of arrest of the person has been abolished, and the seamen can always obtain the *allocatur* of the judge and thus escape giving stipulation for costs, there seems to be no advantage obtainable under that rule over the ordinary suit *in personam*.

⁷ Rev. Stat. § 4547.

⁸ *Oliver v. Alexander*, 31 U. S. (6 Peters), 143.

⁹ *The Wm. L. Norman*, 49 F. R. 285. Even though towed by steam. *The George Urban, Jr.*, 70 F. R. 791.

¹⁰ Rev. Stat. § 4536; *McCarty v. The City of New Bedford*, 4 F. R. 818; *Ross v. Bourne*, 14 id. 858; *The City of New Bedford*, 20 id. 57.

CHAPTER XLI.

PRIZE CAUSES.

§ 609. Prize Cases must be heard in Admiralty.

Before property captured can be properly disposed of, it must be condemned as prize, in a regular judicial proceeding, in which all parties interested may be heard.¹ This proceeding must be had in a court of admiralty, deciding according to the law of nations. The proper court is the court of the nation or government to which the captor belongs.² In the United States, the only court having original jurisdiction in cases of prize, is the District Court of the United States. To adjudicate in matters of prize is a portion of the regular functions of that court.³

§ 610. Prize Commissioners.

On the breaking out of hostilities the court appoints prize-commissioners.⁴ These commissioners are officers of the court, and subject to its direction and control. They examine the witnesses on the standing interrogatories; and perform such other duties as may be imposed upon them by the law, or the court. The other officers of the court, the district attorney, the clerk, and the marshal, perform their respective functions in prize cases as in cases on the instance side of the court.

§ 611. The Evidence must come from the Prize.

A peculiarity of prize proceedings is that the evidence upon which the cause must be heard in the first instance, and on which the property must be condemned or acquitted, must come entirely from the

¹The *Henrick and Maria*, 4 Rob. 55; *Jecker v. Montgomery*, 54 U. S. (13 How.) 498; *Fay v. Montgomery*, 1 Curt. C. C. R. 266; *Stewart v. The U. S.*, 27 Law Rep. 134.

²*Cheviott v. Fausset*, 3 Binn. 220; *Bingham v. Cabot*, 3 U. S. (3 Dall.) 19; *L'Invincible*, 14 U. S. (1 Wheat.) 238; *The Santissima Trinidad*, 20 U. S. (7 Wheat.) 283; *Findlay v. The William*, 1 Pet. Ad. R. 12.

³*The Amiable Nancy*, 16 U. S. (3 Wheat.) 546; *The Amy Warwick*, 2 Sprague, 123; *The Anna*, Blatchf. Pr. Cas. 337.

⁴Rev. Stat. § 4621; Prize Rule 9.

vessel taken, the papers on board the vessel, and the testimony on oath of the master, officers, and other persons attached to the vessel and on board at the time of the capture.⁵ This peculiarity is of the very essence of the administration of prize law. The common law practice and rules of evidence have no relation to the subject.⁶

At the time of the capture, it is therefore the duty of the captors to secure, take an inventory of, and preserve as evidence, all the papers on board the prize, and to bring in for examination the master, principal officers, and some of the crew of the captured vessel.⁷

§ 612. Examination of Witnesses.

As soon as the prize arrives in port, notice should be given by the captors who are in charge of it, to the district judge, or to the prize-commissioners, that the examinations of the captured witnesses may be taken without delay.⁸ These witnesses are examined by the prize-commissioners in writing and upon oath, in answer to the standing interrogatories. These interrogatories are sifting and thorough on all points which can affect the question of prize. They are prepared and published by standing order of the court, and are not accessible beforehand to the witnesses, except by special authority from the court.⁹

The witnesses are not allowed to have communication with, or to be instructed by counsel. They are produced, each separately and apart from the others, in the presence of the agents of the parties, before the commissioners, whose duty it is to superintend the regularity of the proceedings, and protect the witnesses from surprise or misrepresentation.¹⁰ The commissioners have no authority to use any but the standing interrogatories, and must require each interrogatory to be answered fully. In the event of the refusal of a witness, either to answer at all, or to answer fully, it is their duty to certify the fact

⁵ *The Dos Hermanos*, 15 U. S. (2 Wheat.) 76; *The Pizarro*, id. 227; *The Amiable Isabella*, 19 U. S. (6 Wheat.) 1; *The Sir William Peel*, 72 U. S. (5 Wall.) 517; *The Peterhoff*, id. 28; s. c., Blatchf. Pr. Cas. 463; *The Cheshire*, id. 151; *The Zavalla*, id. 173; *The Jane Campbell*, id. 101.

⁶ 1 Wheat. Appendix, note II, p. 497; *The Adeline*, 13 U. S. (9 Cranch), 244, 284.

⁷ Rev. Stat. § 4615; *The Eliza and Katy*, 6 Rob. 185; *The Henrick and Maria*, 4 id. 43, 57; *The Dos Hermanos*, 15 U. S. (2 Wheat.) 76; *The Arabella*, 2 Gall. 368; *The Flying Fish*, id. 374; *The Actor*, Blatchf. Pr. Cas. 200.

⁸ Prize Rule 2.

⁹ Rev. Stat. § 4622.

¹⁰ *The Speculation*, 2 Rob. 243; *The William and Mary*, 4 id. 381; *The Apollo*, 5 id. 286; Rev. Stat. § 4622.

to the court.¹¹ There is no cross examination. These examinations are called examinations *in preparatorio*.

The prize-master should also deliver up to the prize-commissioners, or one of them, all the papers and documents found on board the prize, together with an affidavit made by him, that they are delivered up as taken, without fraud, addition, subduction, or embezzlement.¹²

§ 613. Court may Order Further Proof.

As soon as the examinations are completed, each deposition is signed by the witness making it, and also by the commissioners, or one of them. They are then sealed up and transmitted to the proper District Court, together with all the vessel's papers.¹³ These papers and examinations constitute the only evidence on which the cause is first heard. If on this evidence there be doubt, or justice require it, the court may, in its discretion, order further proof; and the court on proper application may order the cargo to be landed, and the packages opened and inspected for the detection of contraband articles, or for ascertaining the destination of the vessel or cargo, or the true character of the voyage.¹⁴ But the court will not order further proof where the ship's papers and the testimony of the crew make out a case for condemnation, at least unless the interest of justice clearly requires it.¹⁵

§ 614. No Delay Admissible.

The necessary papers and the preparatory examinations having been transmitted to the court, it is the duty of the captors to apply to the court without delay, for adjudication; and in case of neglect or refusal on their part, the claimants may so apply.¹⁶ The proceeding for the condemnation of a prize is purely *in rem*. It is commenced, when the capture is made by a national vessel, in the name of the United States by the United States District Attorney, by filing a libel in the District Court.¹⁷ In the case of captures by privateers, the com-

¹¹ Prize Rules 12, 13, 14, 15, 16; *The Peterhoff*, 72 U. S. (5 Wall.) 28; s. c., Blatchf. Pr. Cas. 463.

¹² Rev. Stat. §§ 4617, 4622; Prize Rules 8, 9, 10.

¹³ Prize Rules 11, 20.

¹⁴ *The Peterhoff*, Blatchf. Pr. Cas. 463; *The Adriana*, 1 Rob. 313; *The Romeo*, 6 id. 351; *The Sarah*, 3 ib. 330; *The Cuba*, 2 Sprague, 168; *The Lilla*, id. 577.

¹⁵ *The Adula*, 176 U. S. 361.

¹⁶ Rev. Stat. § 4625; Prize Rule 23; *The Tropic Wind*, Blatchf. Pr. Cas. 64; *The Springbok*, id. 349.

¹⁷ Rev. Stat. § 4618; *Jecker v. Montgomery*, 59 U. S. (18 How.) 110; *vide* *The Emma*, Blatchf. Pr. Cas. 561; *The Sally Magee*, id. 382; *The Empress*, id. 146, 659; *The Andromeda*, 69 U. S. (2 Wall.) 481.

mander employs his proctor and libels in behalf of himself and the other captors. On the libel a monition and warrant issues to the marshal, for the seizure of the property. The notice under the monition is made by publication.¹⁸

§ 615. Practice on Defaults.

On the return day of the process, if no claim be interposed, upon the usual proclamation being made, and no person appearing, the default of all persons is entered, and the court will then proceed to examine the evidence and make its decree. It is not usual, however, to condemn goods by default, till a year and a day after the service of the process; at the expiration of which time, no claim being interposed, the property is condemned of course, and the question of former ownership is precluded forever, and distribution may be made.¹⁹

§ 616. Claim of Property.

If the parties interested wish to contest the capture, or procure the restitution of property captured, they should, at or before the return of the monition or time assigned for trial, enter their claim before the court. The claim should be made by the parties interested, if present, or if absent, then by the master, or some agent of the owners. A stranger will not be permitted to claim.²⁰ The claim must be accompanied by an affidavit, which is called the test affidavit, stating briefly the facts respecting the claim and its verity. It should state that the property, at the time of shipment and also at the time of capture, did belong, and if restored will belong, to the claimant; and if there should be any special circumstances in the case, these should be added. The affidavit should be sworn to by the parties themselves, if they are within the jurisdiction. If they are absent from the country, or at a very great distance from the court, it may be sworn to by an agent.²¹

¹⁸ Prize Rules 24, 43, 44.

¹⁹ *The Henrick and Maria*, 4 Rob. 43, 44; *The Staadt Embden*, 1 id. 26; *The Harrison*, 14 U. S. (1 Wheat.) 298; *The Avery*, 2 Gall. 308; *Stratton v. Jarvis*, 33 U. S. (8 Pet.) 4; *The Falcon*, Blatchf. Pr. Cas. 52; *Cushing v. Laird*, 107 U. S. 78.

²⁰ Prize Rule 42; *The Betsey*, 1 Rob. 98; *The Mentor*, id. 181; *The Huldah*, 3 ib. 239; *The George*, id. 129; *The William*, 4 id. 215; *The Tobago*, 5 id. 218; *The Susanna*, 6 id. 48; *The Marianna*, id. 24; *The Frances*, 12 U. S. (8 Cranch), 335; *Bolch v. Darrel*, Bee, 74; *Cushing v. Laird*, 107 U. S. 69.

²¹ Prize Rule 42; *The Adeline*, 13 U. S. (9 Cranch), 244, 286; *The Betsey*, 2 Gall. 377.

§ 617. Restitution and Damages—Distribution Abolished.

If, upon the hearing, the sentence of the court be a decree of acquittal and restitution, and the property remains specifically in the custody of the court, a warrant or order issues for its delivery to the claimant. If the property has been sold and the proceeds are in court, an order issues for the delivery of such proceeds. If, on account of the absence of probable cause of capture, or by reason of any other misconduct on the part of the captors, damages are awarded against them, the court appoints three commissioners to assess the damages.²² Costs and expenses are in the discretion of the court and depend upon the proofs of probable cause of capture. When, however, further proof has been ordered, costs and expenses are allowed to the captors.²³

The provisions formerly prevailing providing for distribution of the proceeds or prize among the officers and men of the capturing vessel, were abolished by Sec. 13 of Chap. 413 of the Laws of 1899, (30 Stat. p. 1007).

§ 618. Appeals.

In prize causes, an appeal lies from the District Court directly to the Supreme Court without regard to amount, and without certificate of the District judge.²⁴ Such appeal must be made within thirty days of the rendering of the decree appealed from, unless the court shall previously have extended the time, for cause shown in the particular case.²⁵

²² Prize Rules, 49, 50; *The Charming Betsey*, 6 U. S. (2 Cranch), 64; *The Lively*, 1 Gall. 315; Pratt, Prize Prac. 112.

²³ *The Einigheden*, 1 Rob. 323; *The Diana*, 5 id. 67; *The Pigou*, 6 U. S. (2 Cranch), 98, note; *The Charming Betsey*, id. 64; *Maley v. Shattuck*, 7 U. S. (3 id.) 458; *Del Col v. Arnold*, 3 U. S. (3 Dall.) 333; *The Velasco*, Blatchf. Pr. Cas. 54; *The Jane Campbell*, id. 101; *The Imina*, 3 Rob. 167; *The Principe*, Edw. Ad. R. 70; *The Evening Star*, Blatchf. Pr. Cas. 582; *The Thompson*, id. 377; S. C. 70 U. S. (3 Wall.) 155; *The Dashing Wave*, 72 U. S. (5 Wall.) 170; *The Ann Green*, 1 Gall. 274.

²⁴ *The Paquete Havana*, 175 U. S. 677.

²⁵ Rev. Stat. §§ 695, 4636; *vide* Prize Rule 51.

APPENDIX.

THE ADMIRALTY RULES.

RULES OF PRACTICE

FOR

THE COURTS OF THE UNITED STATES,

IN

ADMIRALTY AND MARITIME CASES, ON THE INSTANCE SIDE OF
THE COURT, IN PURSUANCE OF THE ACT OF THE
TWENTY-SECOND OF AUGUST, 1842,
CHAP. 188, 5 STAT. p. 516.

1.

No mesne process shall issue from the District Courts in any civil cause of admiralty and maritime jurisdiction until the libel, or libel of information, shall be filed in the clerk's office from which such process is to issue. All process shall be served by the marshal, or by his deputy, or, where he or they are interested, by some discreet and disinterested person appointed by the court.

2.

In suits *in personam* the mesne process may be by a simple warrant of arrest of the person of the defendant in the nature of a *capias*, or by a warrant of arrest of the person of the defendant, with a clause therein that if he cannot be found, to attach his goods and chattels to the amount sued for; or if such property cannot be found, to attach his credits and effects to the amount sued for in the hands of the garnishees named therein; or by a simple monition, in the nature of a summons to appear and answer to the suit, as the libellant shall, in his libel or information, pray for or elect.

3.

In all suits *in personam*, where a simple warrant of arrest issues and is executed, the marshal may take bail, with sufficient sureties, from the party arrested, by bond or stipulation, upon condition that he will appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein in the court to which the process is returnable, or in any appellate court.

And upon such bond or stipulation summary process of execution may and shall be issued against the principal and sureties by the court to which such process is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

4.

In all suits *in personam* where goods and chattels, or credits and effects, are attached under such warrant authorizing the same, the attachment may be dissolved by order of the court to which the same warrant is returnable, upon the defendant, whose property is so attached, giving a bond or stipulation, with sufficient sureties, to abide by all orders, interlocutory or final, of the court, and pay the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court; and upon such bond or stipulation summary process of execution shall and may be issued against the principal and sureties by the court to which such warrant is returnable, to enforce the final decree so rendered, or upon appeal by the appellate court.

5.

Bonds, or stipulations in admiralty suits, may be given and taken in open court, or at chambers, or before any commissioner of the court who is authorized by the court to take affidavits of bail and depositions in cases pending before the court, or any commissioner of the United States authorized by law to take bail and affidavits in civil cases.*

6.

In all suits *in personam* where bail is taken the court may, upon motion, for due cause shown, reduce the amount of the sum contained in the bond or stipulation therefor; and in all cases where a bond or stipulation is taken as bail, or upon dissolving an attachment of property as aforesaid, if either of the sureties shall become insolvent pending the suit, new sureties may be required by the order of the court to be given, upon motion and due proof thereof.

7.

In suits *in personam* no warrant of arrest, either of the person or property of the defendant, shall issue for a sum exceeding five hundred dollars, unless by the special order of the court, upon affidavit or other proper proof, showing the propriety thereof.

8.

In all suits *in rem* against a ship, her tackle, sails, apparel, furniture, boats, or other appurtenances, if such tackle, sails, apparel, furniture, boats, or other appurtenances are in the possession or custody of any third person, the court may, after a due monition to such third person, and a hearing of the cause, if any, why the same should not be delivered over,

* As amended December Term, 1871. 18 Wall. XIV.

award and decree that the same be delivered into the custody of the marshal or other proper officer, if, upon the hearing, the same is required by law and justice.

9.

In all cases of seizure, and in other suits and proceedings *in rem*, the process, unless otherwise provided for by statute, shall be by a warrant of arrest of the ship, goods, or other thing to be arrested; and the marshal shall thereupon arrest and take the ship, goods, or other thing into his possession for safe custody, and shall cause public notice thereof, and of the time assigned for the return of such process and the hearing of the cause, to be given in such newspaper within the district as the District Court shall order; and if there is no newspaper published therein, then in such other public places in the district as the court shall direct.

10.

In all cases where any goods or other things are arrested, if the same are perishable, or are liable to deterioration, decay, or injury by being detained in custody pending the suit, the court may, upon the application of either party, in its discretion, order the same or so much thereof to be sold as shall be perishable or liable to depreciation, decay, or injury; and the proceeds, or so much thereof as shall be a full security to satisfy the decree, to be brought into court to abide the event of the suit; or the court may, upon the application of the claimant, order a delivery thereof to him, upon a due appraisement to be had under its direction, either upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties in such sum as the court shall direct, to abide by, and pay the money awarded by, the final decree rendered by the court or the appellate court, if any appeal intervenes, as the one or the other course shall be ordered by the court.

11.

In like manner, where any ship shall be arrested, the same may, upon the application of the claimant, be delivered to him, upon a due appraisement to be had, under the direction of the court, upon the claimant's depositing in court so much money as the court shall order, or upon his giving a stipulation, with sureties as aforesaid; and if the claimant shall decline any such application, then the court may, in its discretion, upon the application of either party, upon due cause shown, order a sale of such ship, and the proceeds thereof to be brought into court, or otherwise disposed of, as it may deem most for the benefit of all concerned.

12.

In all suits by material men for supplies or repairs or other necessities, the libellant may proceed against the ship and freight *in rem*, or against the master or the owner alone *in personam*.*

* 8 How. VI; 21 How. IV; 18 Wall. XIV.

13.

In all suits for mariners' wages the libellant may proceed against the ship, freight, and master, or, against the ship and freight, or against the owner or the master alone *in personam*.

14.

In all suits for pilotage the libellant may proceed against the ship and master, or against the ship, or against the owner alone, or the master alone, *in personam*.

15.

In all suits for damage by collision the libellant may proceed against the ship and master, or against the ship alone, or against the master or the owner alone, *in personam*.

16.

In all suits for an assault or beating on the high seas, or elsewhere within the admiralty and maritime jurisdiction, the suit shall be *in personam* only.

17.

In all suits against the ship or freight founded upon a mere maritime hypothecation, either express or implied, of the master, for moneys taken up in a foreign port for supplies or repairs, or other necessities for the voyage, without any claim of marine interest, the libellant may proceed either *in rem* or against the master or the owner alone *in personam*.

18.

In all suits on bottomry bonds, properly so called, the suit shall be *in rem* only against the property hypothecated, or the proceeds of the property, in whosoever hands the same may be found, unless the master has, without authority, given the bottomry bond, or by his fraud or misconduct has avoided the same, or has subtracted the property, or unless the owner has, by his own misconduct or wrong, lost or subtracted the property, in which latter cases the suit may be *in personam* against the wrongdoer.

19.

In all suits for salvage the suit may be *in rem* against the property saved, or the proceeds thereof, or *in personam* against the party at whose request and for whose benefit the salvage service has been performed.

20.

In all petitory and possessory suits between part owners or adverse proprietors, or by the owners of a ship, or the majority thereof, against the master of a ship for the ascertainment of the title and delivery of the

possession, or for the possession only, or by one or more part owners against the others to obtain security for the return of the ship from any voyage undertaken without their consent, or by one or more part owners against the others to obtain possession of the ship for any voyage, upon giving security for the safe return thereof, the process shall be by an arrest of the ship, and by a monition to the adverse party or parties to appear and make answer to the suit.

21.

In all cases of a final decree for the payment of money the libellant shall have a writ of execution, in the nature of a *fiery facias*, commanding the marshal or his deputy to levy and collect the amount thereof out of the goods and chattels, lands and tenements, or other real estate of the defendant or stipulators.*

22.

All informations and libels of information upon seizures for any breach of the revenue, or navigation, or other laws of the United States, shall state the place of seizure, whether it be on land, or on the high seas, or on navigable waters within the admiralty and maritime jurisdiction of the United States, and the district within which the property is brought, and where it then is. The information or libel of information shall also propound in distinct articles the matters relied on as grounds or causes of forfeiture, and aver the same to be contrary to the form of the statute or statutes of the United States in such case provided, as the case may require, and shall conclude with a prayer of due process to enforce the forfeiture, and to give notice to all persons concerned in interest to appear and show cause at the return day of the process why the forfeiture should not be decreed.

23.

All libels in instance causes, civil or maritime, shall state the nature of the cause; as, for example, that it is a cause, civil and maritime, of contract, or of tort or damage, or of salvage, or of possession, or otherwise, as the case may be; and if the libel be *in rem*, that the property is within the district; and if *in personam*, the names and occupations and places of residence of the parties. The libel shall also propound and articulate in distinct articles the various allegations of fact upon which the libellant relies in support of his suit, so that the defendant may be enabled to answer distinctly and separately the several matters contained in each article; and it shall conclude with a prayer of due process to enforce his rights *in rem*, or *in personam* (as the case may require), and for such relief and redress as the court is competent to give in the premises. And the libellant may further require the defendant to answer on oath all interrogatories propounded by him touching all and singular the allegations in the libel at the close or conclusion thereof.

* As amended December term, 1861. 1 Black, 6.

24.

In all informations and libels, in causes of admiralty and maritime jurisdiction, amendments in matters of form may be made at any time, on motion, to the court as of course. And new counts may be filed, and amendments, in matters of substance, may be made, upon motion, at any time before the final decree, upon such terms as the court shall impose. And where any defect of form is set down by the defendant upon special exceptions and is allowed, the court may, in granting leave to amend, impose terms upon the libellant.

25.

In all cases of libels *in personam* the court may, in its discretion, upon the appearance of the defendant, where no bail has been taken, and no attachment of property has been made to answer the exigency of the suit, require the defendant to give a stipulation, with sureties, in such sum as the court shall direct, to pay all costs and expenses which shall be awarded against him in the suit, upon the final adjudication thereof, or by any interlocutory order, in the progress of the suit.

26.

In suits *in rem* the party claiming the property shall verify his claim on oath or solemn affirmation, stating that the claimant by whom or on whose behalf the claim is made, is the true and *bona-fide* owner, and that no other person is the owner thereof. And where the claim is put in by an agent or consignee, he shall also make oath that he is duly authorized thereto by the owner; or if the property be, at the time of the arrest, in the possession of the master of a ship, that he is the lawful bailee thereof for the owner. And upon putting in such claim, the claimant shall file a stipulation, with sureties, in such sum as the court shall direct, for the payment of all costs and expenses which shall be awarded against him by the final decree of the court, or, upon an appeal, by the Appellate Court.

27.

In all libels in causes of civil and maritime jurisdiction, whether *in rem* or *in personam*, the answer of the defendant to the allegations in the libel shall be on oath or solemn affirmation; and the answer shall be full and explicit and distinct to each separate article and separate allegation in the libel, in the same order as numbered in the libel, and shall also answer in like manner each interrogatory propounded at the close of the libel.*

28.

The libellant may except to the sufficiency, or fulness, or distinctness, or relevancy of the answer to the articles and interrogatories in the libel; and if the court shall adjudge the same exceptions, or any of them, to be good and valid, the court shall order the defendant forthwith, within such time as the court shall direct, to answer the same, and may further order the defendant to pay such costs as the court shall adjudge reasonable.

* *Vide* Rule 48, *post*, page 434.

29.

If the defendant shall omit or refuse to make due answer to the libel upon the return day of the process, or other day assigned by the court, the court shall pronounce him to be in contumacy and default; and thereupon the libel shall be adjudged to be taken *pro confesso* against him, and the court shall proceed to hear the cause *ex parte* and adjudge therein as to law and justice shall appertain. But the court may, in its discretion, set aside the default, and, upon the application of the defendant, admit him to make answer to the libel at any time before the final hearing and decree, upon his payment of all the costs of the suit up to the time of granting leave therefor.

30.

In all cases where the defendant answers, but does not answer fully and explicitly and distinctly to all the matters in any article of the libel, and exception is taken thereto by the libellant, and the exception is allowed, the court may, by attachment, compel the defendant to make further answer thereto, or may direct the matter of the exception to be taken *pro confesso* against the defendant to the full purport and effect of the article to which it purports to answer, and as if no answer had been put in thereto.

31.

The defendant may object, by his answer, to answer any allegation or interrogatory contained in the libel which will expose him to any prosecution or punishment for a crime, or for any penalty or any forfeiture of his property for any penal offense.

32.

The defendant shall have a right to require the personal answer of the libellant upon oath or solemn affirmation to any interrogatories which he may, at the close of his answer, propound to the libellant touching any matters charged in the libel, or touching any matter of defense set up in the answer, subject to the like exception as to matters which shall expose the libellant to any prosecution, or punishment, or forfeiture, as is provided in the 31st Rule. In default of due answer by the libellant to such interrogatories, the court may adjudge the libellant to be in default and dismiss the libel, or may compel his answer in the premises by attachment, or take the subject-matter of the interrogatory *pro confesso* in favor of the defendant, as the court, in its discretion, shall deem most fit to promote public justice.

33.

Where either the libellant or the defendant is out of the country, or unable, from sickness or other casualty, to make an answer to any interrogatory on oath or solemn affirmation at the proper time, the court may, in its discretion, in furtherance of the due administration of justice, dis-

pense therewith, or may award a commission to take the answer of the defendant when, and as soon as it may be practicable.

34.

If any third person shall intervene in any cause of admiralty and maritime jurisdiction *in rem* for his own interest, and he is entitled, according to the course of admiralty proceedings, to be heard for his own interest therein, he shall propound the matter in suitable allegations, to which, if admitted by the court, the other party or parties in the suit may be required, by order of the court to make due answer; and such further proceedings shall be had and decree rendered by the court therein as to law and justice shall appertain. But every such intervenor shall be required, upon filing his allegations, to give a stipulation, with sureties, to abide by the final decree rendered in the cause, and to pay all such costs and expenses and damages as shall be awarded by the court upon the final decree, whether it is rendered in the original or appellate court.

35.

The stipulations required by the last preceding rule, or on appeal, or in any other admiralty or maritime proceeding, shall be given and taken in the manner prescribed by Rule fifth as amended.

36.

Exceptions may be taken to any libel, allegation, or answer, for surplusage, irrelevancy, impertinence, or scandal; and if, upon reference to a master, the exception shall be reported to be so objectionable, and allowed by the court, the matter shall be expunged, at the cost and expense of the party in whose libel or answer the same is found.

37.

In cases of foreign attachment, the garnishee shall be required to answer on oath or solemn affirmation as to the debts, credits, or effects of the defendant in his hands, and to such interrogatories touching the same as may be propounded by the libellant; and if he shall refuse or neglect so to do, the court may award compulsory process *in personam* against him. If he admits any debts, credits, or effects, the same shall be held in his hands, liable to answer the exigency of the suit.

38.

In cases of mariners' wages, or bottomry, or salvage, or other proceeding *in rem*, where freight or other proceeds of property are attached to or are bound by the suit, which are in the hands or possession of any person, the court may, upon due application, by petition of the party interested, require the party charged with the possession thereof to appear and show cause why the same should not be brought into court to answer the exigency of the suit; and if no sufficient cause be shown, the court may

order the same to be brought into court to answer the exigency of the suit; and upon failure of the party to comply with the order, may award an attachment, or other compulsive process, to compel obedience thereto.

39.

If, in any admiralty suit, the libellant shall not appear and prosecute his suit, according to the course and orders of the court, he shall be deemed in default and contumacy; and the court may, upon the application of the defendant, pronounce the suit to be deserted, and the same may be dismissed with costs.

40.

The court may, in its discretion, upon the motion of the defendant and the payment of costs, rescind the decree in any suit in which, on account of his contumacy and default, the matter of the libel shall have been decreed against him, and grant a rehearing thereof at any time within ten days after the decree has been entered, the defendant submitting to such further orders and terms in the premises as the court may direct.

41.

All sales of property under any decree in admiralty shall be made by the marshal or his deputy, or other proper officer assigned by the court, where the marshal is a party in interest, in pursuance of the orders of the court; and the proceeds thereof, when sold, shall be forthwith paid into the registry of the court by the officer making the sale, to be disposed of by the court according to law.

42.

All moneys paid into the registry of the court shall be deposited in some bank designated by the court, and shall be so deposited in the name of the court, and shall not be drawn out except by a check or checks, signed by a judge of the court, and countersigned by the clerk, stating on whose account and for whose use it is drawn, and in what suit and out of what fund in particular it is paid. The clerk shall keep a regular book, containing a memorandum and copy of all the checks so drawn, and the date thereof.

43.

Any person having an interest in any proceeds in the registry of the court shall have a right, by petition and summary proceeding, to intervene *pro interesse suo* for a delivery thereof to him; and upon due notice to the adverse parties, if any, the court shall and may proceed summarily to hear and decide thereon, and to decree therein according to law and justice. And if such petition or claim shall be deserted, or upon a hearing, be dismissed, the court may, in its discretion, award costs against the petitioner in favor of the adverse party.

44.

In cases where the court shall deem it expedient or necessary for the purposes of justice, the court may refer any matters arising in the progress of the suit to one or more commissioners, to be appointed by the court to hear the parties and make report therein. And such commissioner or commissioners shall have and possess all the powers in the premises which are usually given to or exercised by masters in chancery in reference to them, including the power to administer oaths to and examine the parties and witnesses touching the premises.

45.

All appeals from the District to the Circuit Court must be made while the court is sitting, or within such other period as shall be designated by the District Court by its general rules, or by an order specially made in the particular suit, or in case no such rule or order be made, then within thirty days from the rendering of the decree.*

46.

In all cases not provided for by the foregoing rules the District and Circuit Courts are to regulate the practice of the said courts, respectively, in such manner as they shall deem most expedient for the due administration of justice in suits in admiralty.†

47.

In all suits *in personam* where a simple warrant of arrest issues and is executed, bail shall be taken by the marshal and the court in those cases only in which it is required by the laws of the state where an arrest is made upon similar or analogous process issuing from the state courts.

And imprisonment for debt, on process issuing out of the Admiralty Court, is abolished in all cases where, by the laws of the state in which the court is held, imprisonment for debt has been, or shall be hereafter, abolished, upon similar or analogous process issuing from a state court.

Promulgated December Term, 1850. 10 How. V.

48.

The twenty-seventh rule shall not apply to cases where the sum or value in dispute does not exceed fifty dollars, exclusive of costs, unless the District Court shall be of opinion that the proceedings prescribed by that rule are necessary for the purposes of justice in the case before the court.

All rules and parts of rules heretofore adopted inconsistent with this order are hereby repealed and annulled.

Promulgated December Term, 1850. 10 How. VI.

* As amended May 6, 1872. 18 Wall. XIV.

† The above rules were promulgated at the December Term, 1844, and took effect September 1, 1845. 3 How. III.

49.

Further proof taken in a Circuit Court upon an admiralty appeal shall be by deposition, taken before some commissioner appointed by a Circuit Court, pursuant to the acts of Congress in that behalf, or before some officer authorized to take depositions by the thirtieth section of the act of Congress of the 24th of September, 1789, upon an oral examination and cross-examination, unless the court in which such appeal shall be pending, or one of the judges thereof, shall, upon motion, allow a commission to issue to take such deposition upon written interrogatories and cross-interrogatories. When such deposition shall be taken by oral examination, a notification from the magistrate before whom it is to be taken, or from the clerk of the court in which such appeal shall be pending, to the adverse party to be present at the taking of the same, and to put interrogatories, if he think fit, shall be served on the adverse party, or his attorney, allowing time for their attendance after being notified not less than twenty-four hours, and in addition thereto one day, Sundays exclusive, for every twenty miles traveled: *Provided*, That the court in which such appeal may be pending, or either of the judges thereof, may, upon motion, increase or diminish the length of notice above required.

Promulgated December Term, 1851. 13 How. VI. See Rev. Stat. § 865.

50.

When oral evidence shall be taken down by the clerk of the District Court, pursuant to the above-mentioned section of the act of Congress, and shall be transmitted to the Circuit Court, the same may be used in evidence on the appeal, saving to each party the right to take the depositions of the same witnesses, or either of them, if he should so elect.

Promulgated December Term, 1851. 13 How. VI.

51.

When the defendant, in his answer, alleges new facts, these shall be considered as denied by the libellant, and no replication, general or special, shall be filed, unless allowed or directed by the court, on proper cause shown. But within such time after the answer is filed as shall be fixed by the District Court, either by general rule or by special order, the libellant may amend his libel so as to confess and avoid, or explain, or add to the new matters set forth in the answer; and within such time as may be fixed, in like manner, the defendant shall answer such amendments.

Promulgated December Term, 1854. 17 How. VI. Amended October Term, 1896. 160 U. S. 693.

52.

The Clerks of the District Courts shall make up the records to be transmitted to the Circuit Courts on appeals, so that the same shall contain the following:

1. The style of the court.
2. The names of the parties, setting forth the original parties, and those who have become parties before the appeal, if any change has taken place.

3. If bail was taken, or property was attached or arrested, the process of arrest or attachment and the service thereof, all bail and stipulations, and, if any sale has been made, the orders, warrants, and reports relating thereto.

4. The libel with the exhibits annexed thereto.

5. The pleadings of the defendant, with the exhibits annexed thereto.

6. The testimony on the part of the libellant, and any exhibits not annexed to the libel.

7. The testimony on the part of the defendant, and any exhibits not annexed to his pleadings.

8. Any order of the court to which exception was made.

9. Any report of an assessor or assessors, if excepted to, with the orders of the court respecting the same, and the exceptions to the report. If the report was not excepted to, only the fact that a reference was made, and so much of the report as shows what results were arrived at by the assessor, are to be stated.

10. The final decree.

11. The prayer for an appeal, and the action of the District Court thereon; and no reasons of appeal shall be filed or inserted in the transcript.

The following shall be omitted:

1. The continuances.

2. All motions, rules, and orders not excepted to which are merely preparatory for trial.

3. The commissions to take depositions, notices therefor, their captions, and certificates of their being sworn to, unless some exception to a deposition in the District Court was founded on some one or more of these; in which case so much of either of them as may be involved in the exception shall be set out. In all other cases it shall be sufficient to give the name of the witness, and to copy the interrogatories and answers, and to state the name of the commissioner, and the place where and the date when the deposition was sworn to; and in copying all depositions taken on interrogatories, the answer shall be inserted immediately following the question..

2. The clerk of the District Court shall page the copy of the record thus made up, and shall make an index thereto, and he shall certify the entire document, at the end thereof, under the seal of the court, to be a transcript of the record of the District Court in the cause named at the beginning of the copy made up pursuant to this rule; and no other certificate of the record shall be needful or inserted.

3. Hereafter, in making up the record to be transmitted to the Circuit Court on appeal, the clerk of the District Court shall omit therefrom any of the pleading, testimony, or exhibits which the parties, by their proctors, shall, by written stipulation, agree may be omitted, and such stipulation shall be certified up with the record.

Promulgated January 22, 1855. 17 How. VI. Amended by adding clause 3, May 2, 1881. 103 U. S. XIII.

53.

Whenever a cross-libel is filed upon any counter-claim arising out of the same cause of action for which the original libel was filed, the respondents in the cross-libel shall give security in the usual amount and form, to respond in damages as claimed in said cross-libel, unless the court on cause shown, shall otherwise direct; and all proceedings upon the original libel shall be stayed until such security shall be given.

Promulgated December Term, 1868. 7 Wall. V.

54.

When any ship or vessel shall be libeled, or the owner or owners thereof shall be sued, for any embezzlement, loss, or destruction by the master, officers, mariners, passengers, or any other person or persons, of any property, goods or merchandise, shipped or put on board of such ship or vessel, or for any loss, damage or injury by collision, or for any act, matter, or thing, loss, damage, or forfeiture, done, occasioned or incurred, without the privity or knowledge of such owner or owners, and he or they shall desire to claim the benefit of limitation of liability provided for in the third and fourth sections of the act of March 3, 1851, entitled "An act to limit the liability of shipowners and for other purposes," now embodied in sections 4283 to 4285 of the Revised Statutes, the said owner or owners shall and may file a libel or petition in the proper District Court of the United States, as hereinafter specified, setting forth the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in that behalf; and thereupon said court, having caused due appraisement to be had of the amount or value of the interest of said owner or owners, respectively, in such ship or vessel, and her freight, for the voyage, shall make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, for the payment thereof into court whenever the same shall be ordered; or, if the said owner or owners shall so elect, the said court shall, without such appraisement, make an order for the transfer by him or them of his or their interest in such vessel and freight to a trustee to be appointed by the court under the fourth section of said act; and, upon compliance with such order, the said court shall issue a monition against all persons claiming damages for any such embezzlement, loss, destruction, damage, or injury, citing them to appear before the said court and make due proof of their respective claims at or before a certain time to be named in said writ, not less than three months from the issuing of the same; and public notice of such monition shall be given as in other cases, and such further notice reserved through the post-office, or otherwise, as the court, in its discretion, may direct; and the said court shall also, on the application of the said owner or owners, make an order to restrain the further prosecution of all and any suit or suits against said owner or owners in respect of any such claim or claims.

Promulgated May 6, 1872. 13 Wall. XXII. Amended January 26, 1891. 137 U. S. 711.

55.

Proofs of all claims which shall be presented in pursuance of said motion shall be made before a commissioner, to be designated by the court, subject to the right of any person interested to question or controvert the same; and, upon the completion of said proofs, the commissioner shall make report of the claims so proven, and upon confirmation of said report, after hearing any exceptions thereto, the moneys paid or secured to be paid into court, as aforesaid, or the proceeds of said ship or vessel and freight (after payment of costs and expenses), shall be divided *pro rata* amongst the several claimants, in proportion to the amount of their respective claims, duly proved and confirmed as aforesaid, saving however, to all parties any priority to which they may be legally entitled.

Promulgated May 6, 1872. 13 Wall. XIII.

56.

In the proceedings aforesaid, the said owner or owners shall be at liberty to contest his or their liability, or the liability of said ship or vessel for said embezzlement, loss, destruction, damage, or injury (independently of the limitation of liability claimed under said act), provided that, in his or their libel or petition, he or they shall state the facts and circumstances by reason of which exemption from liability is claimed; and any person or persons claiming damages as aforesaid, and who shall have presented his or their claim to the commissioner under oath, shall and may answer such libel or petition and contest the right of the owner or owners of said ship or vessel, either to an exemption from liability, or to a limitation of liability, under the said act of Congress, or both.

Promulgated May 6, 1872. 13 Wall. XIII.

57.

The said libel or petition shall be filed and the said proceedings had in any District Court of the United States in which said ship or vessel may be libeled to answer for any such embezzlement, loss, destruction, damage, or injury; or, if the said ship or vessel be not libeled, then in the District Court for any district in which the said owner or owners may be sued in that behalf. When the said ship or vessel has not been libeled to answer the matters aforesaid, and suit has not been commenced against the said owner or owners, or has been commenced in a district other than that in which the said ship or vessel may be, the said proceedings may be had in the District Court of the district in which the said ship or vessel may be, and where it may be subject to the control of such court for the purposes of the case as herein before provided. If the ship have already been libeled and sold, the proceeds shall represent the same for the purpose of these rules.

Promulgated May 6, 1872. 13 Wall. XIII. Amended April 22, 1889. 130 U. S. 705.

58.

All the preceding rules and regulations for proceeding in cases where the owner or owners of a ship or vessel shall desire to claim the benefit of limitation of liability provided for in the act of Congress in that behalf, shall apply to the Circuit Courts of the United States where such cases are or shall be pending in said courts on appeal from District Courts.

Promulgated March 30, 1881. 103 U. S. XIII.

59.

In a suit for damage by collision, if the claimant of any vessel proceeded against, or any respondent proceeded against *in personam*, shall, by petition, on oath, presented before or at the time of answering the libel, or within such further time as the court may allow, and containing suitable allegations showing fault or negligence in any other vessel contributing to the same collision, and the particulars thereof, and that such other vessel or any other party ought to be proceeded against in the same suit for such damage, pray that process be issued against such vessel or party to that end, such process may be issued, and if duly served, such suit shall proceed as if such vessel or party had been originally proceeded against; the other parties in the suit shall answer the petition; the claimant of such vessel or such new party shall answer the libel; and such further proceedings shall be had and decree rendered by the court in the suit as to law and justice shall appertain. But every such petitioner shall upon filing his petition, give a stipulation, with sufficient sureties, to pay to the libellant and to any claimant or new party brought in by virtue of such process, all such costs, damages, and expenses as shall be awarded against the petitioner by the court upon the final decree, whether rendered in the original or appellate court; and any such claimant or new party shall give the same bonds or stipulations which are required in like cases from parties brought in under process issued on the prayer of a libellant.

Promulgated March 26, 1883. 112 U. S. 743.

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RULES
OF THE
UNITED STATES DISTRICT COURTS,
FOR THE
SOUTHERN AND EASTERN DISTRICTS OF NEW YORK.

In Effect From and After July 1, 1898.

1.

Libels, petitions, and answers thereto, unless otherwise ordered by the court for cause, and except on behalf of the United States, shall be verified; the verification to be made by the party, or by one of the parties, if in the United States and within 100 miles of New York city; otherwise it may be made by the agent, attorney in fact, or proctor, acquainted with the facts,—the affiant's means of knowledge or information in such case and the reason why the verification is not made by the party, to be stated. If the personal oath of the party be demanded, proceedings may be stayed a reasonable time to enable such verification to be taken by commission or *dedimus potestatem*.

2.

All papers, not otherwise provided for by law, shall be filed, and shall be plainly and fairly engrossed without erasures or interlineations materially defacing them. If papers not conforming to this rule are offered, the clerk before receiving them shall require the allocatur of the judge to be endorsed thereon.

3.

Amendments, or supplementary matters, must be connected with the libel or other pleadings by appropriate references, without a recapitulation or restatement of the pleadings amended or added to.

4.

Persons entitled to participate in the recovery, and in suits for wages any other seamen claiming wages for the same voyage, not made parties in the original libel, may, upon petition, be admitted to prosecute as co-

libellants upon such terms as the court may deem reasonable. Suits may also be joined or consolidated as provided by law.

5.

When various actions are pending, all resting upon the same matter of right or defence, although there be no common interest between the parties, the court, by order, at its discretion, may compel said actions to be tried together, and will enter a decree in each cause conformably to the evidence applicable thereto.

6.

Whenever, from the death of any of the parties, or changes of interest in the suit, defect in the pleadings or proceedings, or otherwise, new parties to the suit are necessary, the persons required to be made parties may be made such either by a petition on their part or by the adverse party. In either mode, it shall be sufficient to allege briefly the prayer of the original libel, the interest which the party sought to be added or substituted has in the action, the several proceedings in the cause and the date thereof, and to pray that such persons required to be made parties in the suit may be made such parties. On service of a copy of such petition and of notice of the presenting thereof, such order will be made for the further proceeding in the cause as shall be proper for its speedy and convenient prosecution as to such new parties; and the same stipulations and security shall, in all such cases, be required and given, as in cases of persons becoming originally parties to suit.

7.

No libel, petition, appearance or answer shall be received, or third party permitted to intervene or claim, except on the part of the United States, or on the special order of the court, or when otherwise provided by law, unless a stipulation for costs shall be first entered into by the party, conditioned that the principal shall pay all costs awarded against him by this court, and in case of appeal, by the Appellate Court; such stipulations to be with at least one surety resident in the Southern or the Eastern District, and to be in the sum of \$250 in cases *in rem*, and \$100 in cases *in personam*.

But seamen suing for wages in their own right and for their own benefit, for services on board American vessels (excepting as provided by Rule 68), *salvors* coming into port in possession of the property libelled, petitioners for money in the registry of the court, and the mayor, aldermen and commonalty of the city of New York or the city of Brooklyn, shall not be required to give such security in the first instance. The court, however, on motion with notice to the parties, will, for adequate cause shown, order the usual stipulations to be given.

8.

When not otherwise provided for by law, suits can be prosecuted or defended *in forma pauperis* by express allowance of the court only, and in

such cases no stipulation for costs will be required; but process *in rem* in such causes, unless specially allowed by the court, shall not issue except upon proof of twenty-four hours' notice of the filing of the libel, for opportunity to appear. In the absence of the judge the allowance may be made by the clerk.

9.

Process to be used in commencing suits may be *in personam* or *in rem*, or both, when not otherwise provided; and shall be issued by the clerk.

Process *in personam* may be:

- (1) A simple monition *in personam*.
- (2) Such monition united with a clause of attachment of defendant's goods and chattels if the defendant is not found.
- (3) Such monition and attachment united with a foreign attachment of the defendant's goods, moneys, choses in action, credits, or effects in the hands of third persons; the names of such third persons and the specific property in their hands to be attached as stated in the libel, shall be expressed in the process, with a citation to the garnishee to appear and answer on oath concerning the same. But except on a libel for liquidated damages not exceeding \$500, no process of attachment or foreign attachment shall issue under this, or the preceding subdivision, unless allowed by special order of the court, upon due proof of the demand and of the propriety of the attachment being first made.
- (4) A warrant of arrest of the person, upon the special order of the court, in cases allowed by law, either alone or united with an attachment.

Process *in rem* may be:

- (1) A warrant to arrest the property libelled, with a general monition to all persons interested therein.
- (2) Such warrant and monition united with any process *in personam* above specified, when such joinder is allowable.

10.

Final process, in this court, in all cases for the sale of property, shall be by writ of execution, in the nature of a *feri facias*, or *venditioni exponas*.

11.

In all possessory actions, the process shall be made returnable at the first general return day not less than three days after the filing of the libel, unless otherwise ordered by the judge. In such actions, the answer will be required to be filed upon return of the process duly served, and a day of hearing will then be fixed unless otherwise ordered for cause shown. Notice by publication will not be required in possessory actions, unless specially ordered.

12.

On service of foreign attachment the party holding the property, funds, credits, or effects attached, shall, on the return day of the process, file an

affidavit containing a full and true statement of the property, funds, credits or effects in his hands belonging to the defendant at the time the attachment was served and at the time the affidavit was made; and declare whether he had any, and, if any, what claim to any, and what part thereof; and unless he shall then on motion of the libellant, pay into court such amount as he shall not claim, or such amount as may be ordered by the court, he shall give stipulation with sufficient surety to hold the same with interest thereon to answer the exigency of the suit, and to abide the further order or decree of the court in relation thereto; and on his default in this behalf or in default of his appearance to answer interrogatories on oath, an order may be entered that an attachment issue against him unless he shall show cause in four days, or on the first day the court shall be in session thereafter.

13.

When the property, effects, or credits named in any process of foreign attachment, are not delivered up to the marshal by the garnishee or trustee, or are denied by him to be the property of the party defendant, it shall be a sufficient service of such foreign attachment to leave a copy thereof with such garnishee or trustee, or at his usual residence or place of business, with notice of the property attached; and on due return thereof by the marshal the libellant, on proof satisfactory to the court that the property belongs to the defendant, may proceed to a hearing and final decree in the cause. If the defendant appears, further proceedings may be had as is usual in suits *in personam*.

In proceedings *in rem*, process against freight or proceeds of property in possession of any person, and all orders granted by the court under Rule 38 of the Supreme Court, may be served in like manner.

14.

In proceedings *in rem* in behalf of the United States, when the goods are under seizure by the collector and in his possession, the clerk, at the instance of the district attorney, may omit the attachment clause in the monition.

In such suits, and also in other suits *in rem* when the things libelled are in the custody of the collector of customs under authority of any revenue law of the United States, it shall be a sufficient service of the monition and warrant, in the first instance, to leave a copy thereof with the said collector, with notice of the attachment of the property therein described, and requiring such collector to detain such property in custody until the further order of the court; and in case the collector is not found within the district, then to leave also such copy and notice with the custodian of the property within the district; with notice, also, except in customs seizure cases, to the owner or his agent, if found within the district; subject, however, to such further special order as the court may make thereon.

15.

No process shall be received on file unless duly returned by the proper officer.

All process to the marshal shall be returned on the return day thereof; if not so returned by him, or within four days after written notice so to do, an order may be entered of course that he show cause why an attachment should not issue against him.

Upon process *in rem* the return shall state the day of seizure or of sale, as the case may be.

16.

Processes, orders to show cause and notices of motion shall, upon the return day thereof, be called by the clerk, and thereupon, when there is no opposition, the orders prayed for in accordance with the practice of the court, may be entered by the clerk, whether the judge be personally present or not; and in like manner orders, which, according to the practice of the court, are granted as of course, may be entered, reserving to any party affected thereby the right to apply to the judge at the earliest opportunity to vacate or modify the same. In the event of opposition, the papers may, in the absence of the judge, be left with the clerk, to be by him submitted to the judge for decision thereon, or the clerk may adjourn the matter until the judge shall be in attendance.

17.

Property seized by the marshal may be released as follows:

First. By giving bond as provided in § 941 of the Revised Statutes.

Second. In all suits for sums certain, by paying into court the amount sworn to be due in the libel, with interest computed thereon from the time it was due to the stated term next succeeding the return day of the attachment, and the costs of the officers of the court already accrued, together with the sum of \$250, to cover further costs; or by filing an approved stipulation for such sworn amount, with interest, costs and damages, conditioned as in the next subdivision stated; and by payment into court of the costs of officers of the court as provided by Rule 20; and in either case the claimant may thereupon have an order entered *instantly* for delivery of the property arrested without appraisement.

Third. In all suits other than possessory or petitory actions, by filing an approved stipulation for the amount of the appraised or agreed value of the property seized with interest, (unless the same is modified by order of the court), conditioned to abide by all orders of the court, interlocutory or final, and to pay the amount awarded by the final decree rendered by this court, or by any appellate court, if any appeal intervene, with interest.

Fourth. In possessory and in petitory actions, upon the order of the court only, and on such security and terms as ordered.

Fifth. By an order duly entered upon the written consent of the proctor for the party or parties on whose behalf the property is detained.

18.

If, in a possessory suit, after decree for either party, the other shall make application to the court for a proceeding in a petitory suit, and file the proper stipulation, the property shall not be delivered over to the prevailing party until after an appraisement is made, nor until he shall give a stipulation with sureties to restore the same property without waste, in case his adversary shall prevail in the petitory suit, and also to abide as well all interlocutory orders and decrees as the final sentence and decree of the District Court, and, on appeal, of the Appellate Court.

19.

In case of the attachment of property, or the arrest of the person, in causes of civil and admiralty jurisdiction (except in suits for seamen's wages when the attachment is issued upon certificate pursuant to §§ 4546 and 4547 of the Revised Statutes), the party arrested, or any person having a right to intervene in respect to the thing attached, may upon evidence showing any improper practises or a manifest want of equity on the part of the libellant, have a mandate from the judge for the libellant to show cause *instantly* why the arrest or attachment should not be vacated.

20.

No property in the custody of the marshal or other officer of the court shall be delivered up without the order of the court, but, except in possessory actions, such order may be entered, of course, by the clerk, on filing a written consent thereto by the proctor in whose behalf it is detained; or after filing an approved stipulation or an approved bond to the marshal, as provided by law. But except in proceedings under §941 of the Revised Statutes, the marshal shall not deliver property released on stipulation or on deposit of moneys, until the accrued costs and charges of the officers of court shall first be paid into court by the party receiving the property, to abide the decision of the court in respect to the amount of costs due to them.

21.

All stipulations in causes civil and maritime, shall be executed and acknowledged by the principal party (if within the district), and at least one surety resident in the southern or the eastern district, and shall state the street and number, if there be any, of the surety's residence, and his occupation, and be accompanied by the surety's acknowledgment and his justification by affidavit that he is worth double the amount thereof over all his debts and liabilities; and such stipulation shall contain the consent of the stipulators, that in case of default or contumacy on the part of the principal or sureties, execution to the amount named in such stipulation may issue against the goods, chattels and land of the stipulators. Parties not residing in either of said districts must supply at least two sureties.

22.

Stipulations to release property from attachment or arrest may be taken out of court on short notice before the clerk, or a commissioner, or a notary public, or under a *dedimus potestatem*. The officer taking the stipulation shall, if required by the opposite party, examine the sureties under oath as to their sufficiency, and annex their depositions.

To obtain the judge's approval thereof, if not consented to, reasonable notice of application therefor shall be given. In the absence of the judge, the approval of the clerk, or deputy clerk, on like notice, shall be sufficient.

Sureties in stipulations for costs may be examined in like manner on demand thereof served upon the proctors of the party giving the stipulation, who shall thereupon give reasonable notice of the time and place of the justification of sureties.

23.

In all cases of stipulations in civil and admiralty causes, any party having an interest in the subject matter may, at any time on two days' notice, move the court on special cause shown for greater or better security; and any order made thereon may be enforced by attachment, or otherwise.

24.

In suits *in personam*, stipulators on the arrest of the defendant may be discharged from their stipulation before or after the return of the warrant, on the surrender of the principal by them or by himself, except in respect to costs in this court or in any other court to which the cause may be appealed.

25.

The clerk shall provide a book in which shall be entered all stipulations filed in causes civil and admiralty, which shall be open to the examination of all parties interested.

26.

In cases of seizure of property in behalf of the United States, an appraisement for the purpose of bonding the same may be had by any party in interest, on giving one day's previous notice of motion before the court, or the judge in vacation, for the appointment of appraisers. If the parties or their proctors and the district attorney are present in court, such motion may be made *instantly*, after seizure, and without previous notice.

27.

Orders for the appraisement of property under arrest at the suit of an individual, may be entered, of course, by the clerk, at the instance of any party interested therein, or upon filing the consent of the proctors for the respective parties.

28.

Only one appraiser is to be appointed in suits by individuals, unless otherwise ordered by the judge, and, if the respective parties do not agree in writing upon the appraiser to be appointed, the clerk shall forthwith name him, either party having right to appeal *instantly* to the judge from such nomination, for adequate cause.

29.

Appraisers, before executing their trust, shall be sworn or affirmed to its faithful discharge before the clerk, or his deputy, a United States commissioner, or notary public, and shall give one day's notice of the time and place of making the appraisement, by notifying the proctors in the cause and by affixing the notice in a conspicuous place adjacent to the United States court rooms, and where the marshal usually affixes his notices, to the end that all persons concerned may be informed thereof; and the appraisement, when made, shall be returned to the clerk's office.

30.

Appraisers acting under an order of the court shall be severally entitled to at least five dollars for each day necessarily employed in making the appraisement, to be paid by the party at whose instance the same shall be ordered.

31.

Upon any seizure in suits *in rem*, or upon any information *in rem* or *in personam* wherein publication is required by law, such publication by the marshal shall, except as otherwise ordered, be made in the newspaper designated for that purpose by the court by general order.

RULE 32 OF THE SOUTHERN DISTRICT ONLY. SEE BELOW.

Notice of the arrest of property in suits *in rem* other than in behalf of the United States, shall be published and affixed as required in case of seizures on the part of the United States, unless the judge by special order directs a shorter notice than 14 days; the publication need contain only the title of the suit, the cause or nature of the action, the amount demanded, the time and place of the return of the monition, with notice to all persons interested to appear, or that default and condemnation will be ordered, with the names of the marshal and proctor.

RULE 32 OF THE EASTERN DISTRICT ONLY. SEE ABOVE.

Notice of the arrest of property in suits *in rem*, other than in behalf of the United States, shall be published once, the publication to be six days before the date on which the process is made returnable; if claim has been filed and property bonded before publication, then no publication will be necessary. The publication need contain only the title of the suit, the cause or nature of the action, the amount demanded, the time and place of

the return of the process, with notice to all persons interested in the *res* to appear, or that default and condemnation will be ordered, with the names of the marshal and proctor.

33.

Where the *res* remains in the custody of the marshal, the cause will not be heard until after publication of process shall have been made in that cause, or in some other pending cause in which also the property is held in custody; but no final decree shall be entered after hearing or by default, or on consent of parties, ordering the condemnation and sale of property not perishable, arrested on process *in rem*, unless publication of process in that cause shall have been duly made; nor except on default or by consent of the parties appearing, will any sale of the *res* be ordered by interlocutory decree before the sum chargeable thereon is fixed by the court, unless by the express order of the court because of the perishing or perishable condition of the *res*.

34.

In any admiralty proceeding *in rem* where no proctor has appeared for any claimant, a *venditioni exponas* will not be issued, nor a decree entered, unless proof be furnished of actual notice of the action to an owner or agent of the vessel proceeded against, or to the master in command thereof, in addition to the proof of publication of the notice of arrest of the vessel or unless it be made to appear on special application to the court that such actual notice is unnecessary.

RULE 35 OF THE SOUTHERN DISTRICT ONLY. SEE BELOW.

Notice of sale of property after condemnation in suits *in rem* (except under the revenue laws and on seizure by the United States,) shall be daily for at least six days before sale unless otherwise directed in the decree; and shall be published in manner directed by Act of Congress on condemnation under the revenue laws, § 939 Rev. Stat.

RULE 35 OF THE EASTERN DISTRICT ONLY. SEE ABOVE.

The sale of property after condemnation in suits *in rem* (except under the internal revenue laws and on seizure by the United States), shall be within seven days after issue of the *venditioni exponas*, and notice of sale shall be daily for at least six days before sale, unless otherwise directed in the decree; and no adjournment of the sale except on special order of Court, shall be granted, unless the party requesting the same shall pay to the Marshal the costs, including keeper's fees, that will be incurred by him by reason of such adjournment; and no costs so incurred shall be taxed unless the adjournment was by special order of Court.

36.

A tender *inter partes* before suit shall be of no avail in defence or in discharge of costs unless on suit brought and before answer, plea or claim

filed, the same tender is deposited in the court to abide the order or decree to be made in the matter.

At any time not less than 14 days before trial the respondent or claimant may serve upon the libellant's proctor a written offer to allow a decree to be taken against him for the sum of money therein specified, with costs to the date of the offer to be taxed, which the libellant may within ten days thereafter accept and enter judgment accordingly; if not so accepted, and the libellant fail to obtain a more favorable decree, he cannot recover costs from the time of the offer; but if the respondent or claimant deposits the amount of his offer, or tender, and the clerk's fees for paying out the same, with the clerk, the respondent shall recover costs from the time of deposit if the libellant does not recover a more favorable decree.

37.

At any time after an interlocutory decree in favor of the libellant, the claimant or respondent without admitting liability and without prejudice as to the right to appeal, may serve upon libellant's proctor a written offer to allow libellant's damages to be assessed at a sum of money therein specified, and unless the libellant shall finally obtain a decree for a larger sum, besides interest, he shall not recover any subsequent costs and expenses upon any reference after the offer.

38.

The libellant may at any time on notice take order for the withdrawal of so much of the tender or amount deposited as the court may allow, without prejudice to his subsequent litigation for a larger amount, leaving in the registry a sum sufficient to cover the defendant's costs, in case the amount deposited should be held in this court, or in any Appellate Court, to be sufficient to meet the libellant's demand.

If the respondent serves on the proctor of the libellant written notice of consent that the whole, or any specific part, of the tender deposited be paid over to the libellant, the respondent shall not in any event be liable thereafter for interest on so much of the libellant's claim.

39.

No claim can be made without proof of a subsisting interest of the claimant in the subject matter of the claim. This proof may, in the first instance, be the oath of the claimant; but subject to denial and disproof on the part of the libellant or any other party to the suit, on issue thereto if allowed by the court, or on summary petition.

40.

When an answer is required, in a suit *in rem*, of a party having no interest in the subject matter, he may file an exceptive allegation or disclaimer, and notice the same *instantly* for hearing. If the decree of the court is in affirmance of his plea, he shall be discharged the action.

41.

If separate answers or claims are put in by the same proctor, or by different proctors connected in business, all costs thereby unnecessarily incurred shall be disallowed on taxation.

42.

The defendant may before filing his answer except to the jurisdiction or to the sufficiency of the libel, and if the exception is sustained and the libel is not amended within such time as the court shall allow, it shall be dismissed.

Exceptions to the libel or answer may be heard on any motion day on four days' notice.

43.

Exceptions to the answer shall be taken within four days after notice of the filing of same, which exceptions shall briefly specify the parts excepted to or the grounds of exception, whereupon the party answering or claiming shall in four days either give notice of his submitting to the exceptions, or set down the exceptions for hearing and give four days' notice thereof for the next motion day. In default whereof the like order may be entered as if the exceptions had been allowed by the court.

44.

If a party submit to exceptions he shall amend his pleadings within four days after notice of his submitting. If the exceptions are allowed on hearing, he shall amend his pleadings within such time as the court shall direct; and if the hearing of the exceptions shall not be duly brought on, or the amendment be duly put in, the libel, claim or answer excepted to shall, if the exception was for insufficiency, be treated as a nullity and the default of the party be entered; if the exceptions were for irrelevancy the matter excepted to may be stricken out by the clerk.

45.

Answers to interrogatories may be excepted to in the same manner as answers or claims put in by a defendant, and shall, in all respects, be subject to the provisions of the rules in relation to exceptions; and, if the libellant making answers shall not perfect the same after exception allowed, the libel shall be dismissed for want of prosecution. But this rule shall not in any case be deemed to require answers to interrogatories on the part of the United States, in suits brought in their behalf.

46.

In suits *in rem* in collision cases, if one of the colliding vessels be wholly lost so that no cross libel against her could be maintained, the defendant, if he shall desire to recoup or offset any damage to his own vessel in case it shall be determined on the trial that the collision

occurred through the fault of both vessels, must in his answer state the facts and his own damages, in like manner as upon filing a cross libel; and such statement of damage shall be without prejudice to any defence he may make that the collision was wholly the fault of the other vessel.

47.

Commissions for taking testimony shall be moved for in fourteen days after the claim or answer is filed and perfected (if the same shall have been excepted to); but, if interrogatories shall be propounded for the other party, by the party who moves for a commission, he shall have fourteen days for moving after the answers to the interrogatories shall be perfected; otherwise such commission shall not operate to stay proceedings; but, on a proper case shown, application for a commission and for a stay of proceedings may be made at any time before final decree.

Affidavits on which a motion for a commission is made shall specify the facts expected to be proved, together with the names of the witnesses, and the shortest time within which the party believes the testimony may be taken and the commission returned. On special cause shown, an order for the examination of parties not named may be applied for on notice to the adverse party.

48.

A commission will not be allowed to stay proceedings, except by order of court, if the opposite party admits in writing that the witnesses will depose to the facts stated in such affidavits; such affidavit, with the admission, may be read on the trial or hearing, and will have the same effect as a deposition to those facts by the witness or witnesses named.

49.

Interrogatories for the direct and cross examination in case the parties disagree respecting them, shall be presented to the judge for his allowance at one time, and one day's notice of settlement shall be given the party objecting to the opposite interrogatories; such interrogatories or cross interrogatories may be allowed provisionally, subject to objection at the trial.

Cross interrogatories shall be served within four days after the direct have been received, unless further time shall be ordered. If no notice of settlement before the judge is given within five days after both direct and cross interrogatories have been served, each party shall be deemed to have assented to the interrogatories served. The interrogatories, direct and cross, as agreed to by the parties, or settled by the judge, shall be annexed to the commission. Directions as to the execution and return of the commission signed by the clerk shall accompany the commission.

50.

Depositions taken under commission, or otherwise, shall be forwarded to the clerk immediately after they are taken, and be filed on their return to the clerk's office, in term or vacation, and notice thereof shall be forthwith given by the party for whom they were taken to the proctor of the opposite party, and they shall be opened by order, of course, on notice by either party to the other. And all objections to the form or manner in which they were taken or returned shall be deemed waived, unless such objection shall be specified in writing and filed within four days after the same are opened, unless further time shall be granted by the judge.

RULE 51 OF THE SOUTHERN DISTRICT ONLY. SEE BELOW.

All reports of commissioners, assessors, adjusters, etc., in all matters referred by the court shall be filed by such officers in the office of the clerk of the court, and prompt notice thereof may be given by any of the proctors to the proctors of the other parties appearing. But such officers are not required to file such reports until their proper fees and charges thereon are paid. The same may be taxed by the clerk if required by either party.

RULE 51 OF THE EASTERN DISTRICT ONLY. SEE ABOVE.

All reports of commissioners, assessors, adjusters, etc., in all matters referred by the court shall be filed in the office of the clerk of the court, and prompt notice thereof given by them to the proctors of the parties appearing. But such commissioners, etc., are not required to file such reports until their proper fees and charges thereon are paid. The same may be taxed by the clerk if required by either party; and the proctors of the party procuring the reference shall be personally liable to the commissioners, etc., for the payment of fees as taxed.

RULE 52 OF THE SOUTHERN DISTRICT ONLY. SEE BELOW.

Proof by affidavit, or admission of service, of the notice of filing, provided for in Rule 51, shall be filed. Four days after the service of the notice shall be allowed for the filing and service of exceptions, and unless such exceptions are filed and served within the four days, or such further time as may be allowed by the Court the report will be deemed confirmed. The said service shall be made upon the proctors for all the other parties appearing. Should exceptions be filed, any party may set down the same for hearing upon two days' notice for the first motion day thereafter.

The exceptant will state with precision in each exception the grounds therefor, so that the court can ascertain, without an unreasonable examination of the record, what the basis of the exception is. If the exception be that the commissioner received improper and material evidence, it should state what the evidence was. If it

that he had no evidence to justify his report, it should set forth what evidence he did have. If it be that he admitted the evidence of incompetent witnesses, it should give their names, specify why they were incompetent, what their evidence was and why it should have been rejected. In all cases references must be given to the evidence. Where the volume of evidence is so great that it cannot reasonably be stated at length, the purport will be given with the full reference so that the court will have no difficulty in identifying it.

RULE 52 OF THE EASTERN DISTRICT ONLY. SEE ABOVE.

After the filing of a commissioner's report, either party may except thereto, and either party may set down such exceptions for hearing on two days' notice for the first motion day thereafter.

RULE 53 OF THE SOUTHERN DISTRICT WAS ABROGATED JUNE 22, 1905. SEE BELOW.

RULE 53 OF THE EASTERN DISTRICT ONLY.

Upon filing of the report an order of confirmation *nisi* may be entered of course without notice, unless otherwise ordered by the court, or the report shall be excepted to; and if no exceptions be filed within four days after service of notice of such confirmation *nisi* on the proctors of the other parties, decree final may be entered.

RULE 54 OF THE SOUTHERN DISTRICT WAS ABROGATED JUNE 22, 1905. SEE BELOW.

RULE 54 OF THE EASTERN DISTRICT ONLY.

If the libellant takes no proceedings upon the report within four days after notice of the filing thereof given by the respondent, the respondent may move the court on two days' notice to dismiss the libel for want of due prosecution.

55.

For services rendered by commissioners acting under Rule 44 of the Supreme Court in Admiralty, compensation for which is not otherwise provided by law, a reasonable compensation shall be allowed and taxed.

56.

All bills of costs and of charges to be paid under any order or decree of this court shall be taxed and filed with the clerk before payment thereof; and, if the same shall include charges for disbursements other than to the officers of the court, the proper and genuine vouchers, or an affidavit thereof (in case of loss of vouchers), shall be exhibited and filed; and, if such bill shall be taxed without two days' notice to all parties concerned, it shall be subject to a retaxation, of course, on application by any such party not having had notice, and at the charge of the party obtaining such taxation. The clerk's costs of entering satisfaction of judgment and issuing execution may be taxed as a disbursement.

Any party aggrieved by taxation of costs or the exaction of fees by an officer whose office is in the same building with the court, may apply to the court for relief *instantly*, upon notice to the officer taxing the costs or exacting the fees.

57.

Where proceedings on a decree shall not be stayed by an appeal, and the decree shall not be fulfilled or satisfied in ten days after notice to the proctor, if there be any, of the party against whom it shall be rendered, it shall be of course to enter an order that the sureties of such party cause the engagement of their stipulation to be performed, or show cause in four days, or on the first day of jurisdiction afterwards, why execution should not issue against them, their lands, goods and chattels, according to their stipulation; and, if no cause be then shown, due service having been made on the proctor of the party, if there be any, a summary decree shall be rendered against them on their stipulations, and execution issue; but the same may be discharged on the performance of the decree and payment of all costs and clerk's charges. This rule does not apply to sureties on bonds given under § 941 of the Revised Statutes of the United States.

58.

Whenever after judgment or decree for a sum certain and before execution issued thereon, any party shall pay into court the amount thereof, with interest, costs, and the clerk's statutory charges for receiving and paying out the money; or whenever the marshal (or the proper officer) shall return process of execution fully executed, and shall pay the said amounts into court, including the said charges of the clerk, which shall also be collected on execution, the clerk shall forthwith and without other authorization, enter satisfaction of record on such judgment or decree, at the charge of the party in whose favor such judgment or decree may be rendered.

59.

When any moneys shall come to the hands of the marshal under or by virtue of any order or process of the court, he shall forthwith pay over the gross amount thereof to the clerk, with a bill of his charges thereon and a statement of the time of the receipt of the moneys by him; and, upon the filing of such statements, and the taxation of such charges, the same shall be paid to the marshal out of such moneys; and an account of all property sold under the order or decree of this court, shall be returned by the marshal and filed in the clerk's office, with the execution or other process under which the sale was made.

60.

In proceeding *in rem*, after a sale of the property under a final decree, claims upon the proceeds of sale, except for seamen's wages, will not be

admitted in behalf of lienors filing libels or petitions after the sale, to the prejudice of lienors under libels filed before the sale, but shall be limited to the remnants and surplus.

61.

A party shall not be held to enter his appeal from any decree or order of the court as final, unless the same is in a condition to be executed against him without further proceedings therein in court.

62.

In appealable cases, ten days from the time of service of a copy of the decree on the opposite proctor, with notice of its entry, shall be allowed to enter an appeal, within which time the decree shall not be executed.

63.

The clerk is authorized to tax or certify bills of costs, and to sign judgments, and also take acknowledgments of the satisfaction of judgments, and all affidavits and oaths out of court, as in open court, in all cases where the same are not required by law to be taken in open court.

64.

The deputies (or chief clerks) of the clerk, not exceeding two in number, named and designated by an appointment filed in the office of said clerk, are each authorized to perform all duties appertaining to the clerk which are not required by law to be performed by the clerk in person.

65.

The clerk is authorized to enter satisfaction of record of any judgment on behalf of the United States on filing acknowledgment of satisfaction thereof by the United States attorney; in other cases, upon filing due acknowledgment of satisfaction made by the judgment creditor or his proctor or proctors, within two years from the entry of the judgment, and thereafter upon acknowledgment made by the judgment creditor or by his legal representatives or assigns with evidence of their representative authority.

66.

Proctors, attorneys, counsellors and advocates of any Circuit or District Court of the United States or of the Supreme Court of this state, may be admitted to this court on motion of an attorney or proctor of this court, upon signing the roll and taking the oaths prescribed by the constitution and laws of the United States.

RULE 67 OF THE SOUTHERN DISTRICT ONLY. SEE BELOW.

In admiralty and maritime causes, wherein the matter in demand does not exceed fifty dollars, the proceedings for recovery thereof may be summary.

The monition or citation, or attachment, in such suit, may be made returnable on the first day of a stated or special session of court next succeeding the service thereof, at least three days intervening between the service and return of process *in rem* in suits by individuals.

RULE 67 OF THE EASTERN DISTRICT ONLY. SEE ABOVE.

In admiralty and maritime causes, except in cases of seizure on the part of the United States, the process, or citation, or attachment, shall be made returnable on the first general return day next succeeding the issuing thereof, six days intervening between the issuing and return of process.

68.

In suits *in personam* for wages, where the amount sworn to be due, in the libel, is less than fifty dollars, the clerk shall not issue process without the usual stipulation for costs, unless the libel be accompanied by satisfactory proof that the respondent is about to leave the district; or by an allocatur of the judge, or by a certificate of a commissioner of the Circuit Court, that, upon due service of a summons to the respondent to appear before him, sufficient cause of complaint whereon to found process appeared. Such summons shall be served at least one day previous to the day of hearing therein mentioned, and if it shall appear, on the hearing, to the satisfaction of the commissioner, that the wages claimed have been paid or forfeited, he shall refuse the certificate. And if a reasonable offer of compromise shall be made on such hearing by either party, and be rejected by the other, the commissioner shall add a certificate of such fact. In case of final recovery by the party rejecting such offer, he shall recover no costs. No costs shall be taxed for the proceeding, unless the commissioner shall certify that a demand of wages was made by the seamen a reasonable time previous to taking out the summons. No costs shall be taxed for fees of marshal, clerk or witness on such proceedings, unless by special mandate of the judge a subpoena or attachment is issued to compel the attendance of witnesses. The commissioner's fees for his services thereon shall not exceed one dollar for a single sitting, and every adjournment granted shall be at the expense of the party obtaining it; if, however, it is required by the parties that the commissioner take down in writing the testimony heard on the summons, he shall be allowed therefor the customary fees for like services. Proof so taken in writing may be used by either party, on the hearing in court, in case the suit is further prosecuted.

69.

A guardian *ad litem* will be appointed on petition verified by oath, stating a proper case for such appointment. Infants may sue by *prochein ami*, to be first approved by the court; the guardian or *prochein ami* shall give stipulation for the costs in the same manner as if personally the party in interest.

70.

The clerk shall provide a book in which he shall keep a full and particular account, in each cause depending in the court, of all moneys brought into court, and of the payment of the same, with the dates thereof; and any particular account therein shall be open to the inspection of any person interested in the same.

71.

The commission allowed to the marshal shall be computed upon the gross proceeds, in case of sale; or upon the appraised or agreed value, if bonded; but the marshal, in case of an agreed valuation between the parties, not assented to by him, may have an appraisement in the usual mode.

72.

In other than admiralty causes the marshal shall be entitled upon a settlement by the parties of the debt or claim without a sale of the property, to the like commissions as are provided for in admiralty causes by § 829 of the Revised Statutes.

RULES IN PROCEEDINGS TO LIMIT LIABILITY.

73.

Petitions or libels to limit liability must state:

1. The facts showing that the application is properly made in this district.

2. The voyage on which the demands sought to be limited arose, with the date and place of its termination; the amount of all demands including all unsatisfied liens or claims of liens, on contract or on tort, arising on that voyage, so far as known to the petitioners, and what suits, if any, are pending thereon; whether the vessel was damaged, lost or abandoned, and if so, when and where; the value of the vessel at the close of the voyage, or in case of wreck, the value of her wreckage, strippings or proceeds, if any, as nearly as the petitioners can ascertain, and where and in whose possession they are; also the amount of any pending freight, recovered or recoverable. If any of the above particulars are not fully known to the petitioner, a statement of such particulars according to the best knowledge, information and belief of the petitioner, shall be sufficient.

74.

If a *surrender* of the vessel is offered to be made to a trustee, the libel or petition must further show whether there is any prior paramount lien on the vessel, and whether she has made any, and if so, what voyage or trip since the voyage or trip on which the claims sought to be limited arose, and any existing lien or liens, maritime or domestic, arising upon any such subsequent voyage or trip, with the amounts and causes thereof, and the names and addresses of the lienors, so far as known; also the

special facts on which the right to surrender the vessel is claimed, notwithstanding such subsequent trip or voyage, and whether the vessel sustained any injury upon or by reason of, such subsequent voyage or trip.

Upon surrender of the vessel no final decree exempting from liability will be made until all such liens as may be admitted or proved, prior to such final decree, to be superior to the liens of the claims limited, shall be paid or secured independently of the property surrendered, as may be ordered by the court; and the monition in cases of surrender, shall cite all persons having any claim upon the vessel to appear on the return day or be defaulted, as in ordinary process *in rem*.

75.

If, instead of a surrender of the vessel, an appraisement thereof be sought for the purpose of giving a *stipulation for value*, the libel or petition must state the names and addresses of the principal creditors and lienors, whether on contract or in tort, upon the voyage on which the claims are sought to be limited, and the amounts of their claims, so far as they are known to the petitioner, and the attorneys or proctors in any suits thereon; or if such creditors or lienors be very numerous, then a sufficient number of them properly to represent all in the appraisement; and notice of the proceedings to appraise the property shall be given to such creditors as the court shall direct, and to all the attorneys and proctors in such pending suits.

76.

The stipulation for value upon such appraisement shall be given with sufficient sureties and upon justification as required under these rules in actions *in rem*, and shall provide for the payment of the appraised amount with interest from the close of the voyage, unless otherwise ordered by the court.

77.

If issue is taken by the pleadings upon the right of the petitioners to any limitation of liability, or upon the liability of the petitioners for the claims alleged against them, such issue will not be heard and determined until the publication of the monition, unless otherwise ordered on application to the court.

78.

Proof of claims presented to the commissioner shall be made by or before the return day of the monition by affidavit specifying the nature, grounds and amount thereof, the particular dates on which the same accrued, and what, if any, credits were given thereon, and what payments, if any, have been made on account; with a bill of particulars giving the respective dates and amounts, if the same consists of several different items. Such proof shall be deemed sufficient, unless within five days after the return day of the monition, or after interlocutory decree in case of issue joined by answer to the petition, or within such further time as may be granted by the court, the allowance of the claim shall be objected to by

the petitioner or by some other creditor filing a claim, who shall give notice in writing of such objection to the commissioner and to the proctors of the claim objected to, if any. Any claim so objected to must be established by further legal *prima facie* proof on notice to the objecting party, as in ordinary cases; but any creditor desiring to contest the same upon any specific defence, must, with his notice of objection, or subsequently, if allowed by the commissioner or the court, state such defence, or be precluded from giving evidence thereof; and the unsuccessful party to such contest may be charged with the costs thereof. The commissioner shall on the return day of the monition, file in open court a list of all claims presented to him.

RULES AS TO INFORMATIONS.

79.

Proceedings *in rem* for a forfeiture, and *in personam* for an offence, fine, penalty or debt, may be joined in one information when having relation to the same transaction.

80.

On filing an information *in personam* or *in rem*, the clerk shall issue process thereon, corresponding as nearly as may be with that employed in the instance Court of Admiralty in similar cases. But process *in personam* may be, in the first instance, a *capias* when allowed, or an attachment against goods to compel an appearance, or a simple monition, at the election of the complainant.

81.

No person shall be arrested and held to bail on an information *in personam* without the mandate of the judge, except where such bail is required or authorized by the statute.

82.

All rules applicable to the service of, or proceedings in relation to, process in plenary causes in admiralty, shall equally apply to process on informations.

83.

If the information filed is multifarious or ambiguous, or does not supply plain allegations upon which issue can be taken, or a distinct reference to the statute upon which it is founded, the defendant or claimant may move the court to have it reformed, giving two days' previous notice, together with a specification of his objections, to the district attorney or proctor in whose name it is filed. It may be amended, of course, in conformity with such notice; if not reformed within two days after being pronounced defective by the court, the defendant may take an order of discharge from the action.

84.

In information *in rem*, a delivery on stipulation, of property seized, or a sale of perishable articles, may be had, as in case of proceedings in the instance Court of Admiralty.

85.

The claimant shall appear and interpose his claim or plea on informations *in rem*, within the same time and in the same manner as in causes on the instance side of the Court of Admiralty; and shall appear and plead to informations *in personam* within the same time and in the same manner as in causes at common law.

86.

Instead of a traverse of each separate cause of forfeiture alleged in the information, the defendant may plead, as a general issue to an information *in rem*, "that the several goods in the information mentioned did not, nor did any part thereof, become forfeited in manner and form as in the information in that behalf alleged."

87.

Putting in and justifying bail on behalf of the defendants on arrest, and the proceedings to and on trial and execution, where a trial by jury must be had, shall be the same as in cases of common law jurisdiction.

88.*

In all cases where a marshal takes possession of a distillery, by virtue of a process issued for violation of the internal revenue laws, "he shall immediately cause the head of the still to be taken off, or the machinery to be disconnected in such manner as to render it impossible for distillation to be carried on. The expense thereof shall be returned by the marshal as a part of his disbursements in the cause; and whenever any premises are held in custody by the marshal, under process issued for violation of the internal revenue laws, admission to such premises shall at all times be permitted for any internal revenue officer who would be entitled to admission were the same not in custody of the marshal."

MISCELLANEOUS RULES.

89.

In common law causes all original and final process issued in conformity with § 911 of the United States Revised Statutes, shall be served by the marshal, or by his deputy, except when he is a party.

90.

In common law causes the parties shall be entitled to the same rights and remedies as respects attachments against the property of the defend-

* Not an Eastern District rule.

ant, and as respects proceedings supplementary to execution as are now provided by the laws of the state of New York in common law causes, which laws in respect to attachments and supplementary proceedings are hereby adopted by this court.

91.

On an indictment found by the grand jury, the district attorney may forthwith sue out a bench warrant, capias, or attachment, under the seal of the court, for the arrest and commitment of the party indicted; such writ may also issue, if the defendant fails to appear pursuant to his recognizance given after indictment found; and also upon information duly filed by the district attorney.

92.

When a fine is imposed by the court on any person for any cause other than upon a judgment or sentence in a penal cause, and the party is thereupon committed, and such fine is not discharged previous to the close of the term, the clerk on application of the United States attorney shall issue to the marshal a warrant of execution, commanding him to levy and make such fine of the goods and chattels, or in default thereof of the lands and tenements of the party. Such fine may, on application by the party, and sufficient cause shown, before payment of the same out of the court, into the treasury or otherwise, be mitigated or remitted, at any term succeeding that in which it was imposed.

93.

The amount of all the fines imposed and collected shall be paid into court, to be accounted for by the clerk with the United States treasury.

94.

In cases where the collector of customs is entitled to receive the moneys in court, the same, after deducting the costs, shall be paid him by the clerk, upon an order to be entered of course for that purpose.

95.

Special bail may be put in and filed, for the purpose of surrendering the principal, before the return day of the writ. Bail to the arrest may surrender the principal, or he may surrender himself in their exoneration, upon the bail bond given on his arrest. Copies of the bail bond, certified by the marshal or his deputy, may be used for that purpose, in the same manner as certified copies of the bail piece.

RULE 96 OF THE SOUTHERN DISTRICT ONLY. SEE BELOW.

In no case shall the marshal or his deputies or any attorney or proctor of this court be surety in any suit depending therein; except that a proctor or attorney may in the first instance be surety on the stipulation for costs; but if objected to, other security shall be furnished.

RULE 96 OF THE EASTERN DISTRICT ONLY. SEE ABOVE.

In no case shall the marshal or his deputies or any attorney or proctor of this court be surety in any suit depending therein.

97.

In all cases not provided for by the rules of this court, the rules and practice of the Supreme Court, or of the Circuit Court of the United States for this district, for the time being, (whether adopted before or after these rules), so far as the same may be applicable, shall regulate the practice of this court.

98.

The above arrangement of rules under distinct heads is not to prevent their governing every mode of procedure in court to which they may be applicable; but conflicting provisions under different heads are to be restricted each to the head of practice under which it is placed.

99.

These rules supersede all previous rules of this court, except in Prize cases and in Bankruptcy and Equity; and shall go into effect July 1, 1893.

CALENDAR RULES
PECULIAR TO THE
SOUTHERN DISTRICT OF NEW YORK,
IN ADMIRALTY CAUSES.

RULE A.

Process on libels or informations is returnable on each Tuesday, but may by order be made returnable on any other day in term. But writs for the sale of property, and all final process shall be returnable on the first Tuesday of the month at a stated term, unless an earlier day is ordered.

Tuesday of each week also, except during the summer vacation, is appointed for the hearing of motions and arguments on exceptions.

RULE B.

All motions and arguments shall be noticed for Tuesdays at the opening of Court, unless the Court grant leave for hearing at another time.

Notices of the trial of issues shall be for the first Tuesday of the term unless otherwise ordered, and except that causes entitled to preference may be noticed for any day of the term.

Four days' notice of trial, argument or motion shall be served on the proctor of the opposite party.

RULE C.

The following causes shall be preferred:

1. Where the property shall be in the actual custody of the marshal.
2. For seamen's wages.
3. Where all the testimony has been taken out of Court.
4. Admiralty causes not involving over \$250, which can be tried in an hour may be heard on any Friday for which they are set down by order granted on any previous motion day; such order may be applied for on affidavit served, with four days' notice of motion, upon the other proctors in the cause. If on the trial the hearing is not completed within an hour, the cause may be ordered to the foot of the calendar, or the remaining testimony taken out of Court, and the cause submitted thereupon.

RULE D.

To place the cause on the calendar, a note of issue specifying the party, proctors, and date of issue, must be filed with the clerk, and the calendar fee of \$1.00 paid to him; the cause, if not sooner disposed of, will remain on the calendar for three years and will then be dropped, unless a new note of issue be filed for each year thereafter.

RULE E.

A yearly calendar will be prepared by the clerk for every January, from the notes of issue filed, according to the dates of issue; and the causes not disposed of, or dropped, will be re-numbered every January; new causes will be added during the year in the order of filing the new notes of issue.

RULE F.

The clerk shall, also, prepare for each day on which trials of causes are to be heard, during every stated term, by three p. m. of the day previous, two day calendars; one for the use of the court, and the other for the use of the bar, which shall also be furnished for publication.

RULE G.

Causes may be reserved generally on stipulation filed before they are on the day calendar. By order of the Court, upon notice of two days such reserved causes may be placed upon the day calendar for trial.

RULE H.

Causes called on the day calendar may for cause shown be once set down not later than the second week in the term, or marked off the term by the Court. Off term causes shall be put on the day calendar for the next term in order, after the causes on the last days' calendar not disposed of.

RULE I.

When an answer is filed to the libel in open Court on the return of process, either party may have the cause placed upon the calendar *instanter* for hearing in its order, without further notice, on payment of the Clerk's fee of \$1.00.

RULE K.

In summary cases under Rule 67, on the return of process in open court, duly served, the cause may be put *instanter* upon the calendar, and either party, without other notice, may proceed therein to proofs and hearing; and the party obtaining a continuance of the cause, if *in rem*, shall bear all expenses taxed for keeping the thing attached until the final hearing. In such a cause fees shall not be taxed for more than one witness to prove the same facts, unless it appears that the witness was impeached or his testimony contradicted.

CALENDAR RULES
PECULIAR TO THE
EASTERN DISTRICT OF NEW YORK,
IN ADMIRALTY CAUSES.

RULE A.

Wednesday of each week shall be a general return day, and is appointed as a special sessions of the court (except the stated term be then in session), at which the same proceedings may be taken in causes of admiralty and maritime jurisdiction as at a stated term. All process shall be made returnable at a general return day, unless on cause shown it is otherwise ordered.

RULE B.

The calendar of admiralty cases will be called for hearing at stated terms of court commencing on the first Wednesday of February, of April, of June and of November; and at such other times as the court may direct. At any of the terms of court when no admiralty calendar is called, the proctor in any cause may on two days' notice to the other side, apply to have his cause heard upon a day to be designated by the court.

RULE C.

The clerk shall before the first day of every November term, prepare a permanent calendar of admiralty causes, a copy of which shall be made for the use of the bar. Said calendar shall contain the titles of the causes, the names of the proctors, and the dates of the issues. To place a cause on the calendar, a note of issue specifying the parties, proctors, and date of issue must be filed with the clerk, and a calendar fee of one dollar paid to him.

Causes that were ready for trial and not reached, and causes not called, shall be placed on the next permanent calendar without filing additional notes of issue; and each cause shall be numbered according to date of issue; but causes reached and not tried will not be placed on the next permanent calendar without filing new notes of issue with, and paying an additional calendar fee to, the clerk.

RULE D.

Upon consent of the parties, or upon order of the court, any cause may be omitted from the calendar, until the further order of court.

RULE E.

Upon the taking up of the calendar, the causes will be called in their order upon the calendar. Each cause when called will, upon the application of either party, be set down for hearing for a day in that term to be fixed by agreement of the proctors; or, in the absence of agreement, by the court. No more than four causes will be set down for any one day. No cause will be set down for any motion day, except on special cause shown. If the regular calendar is not called through at any term, the call of the regular calendar at the next term will begin where the call stopped at the term before. Causes so set down as above will be called for hearing in their order. No set-down cause will be postponed, unless, by leave of the court, motion for its postponement is made before the day set for its hearing. Causes so set down and not reached for trial during that term will be placed by the clerk, in their order, on a list of preferred cases for the next admiralty term. Such causes will then be called for hearing in their order before the call of the regular calendar, and any cause upon such list may then be again set down for hearing at the same term. But no such case will be placed a second time on the list of preferred cases.

RULE F.

Motions and exceptions will be heard by the court on Friday of each week at 3 p. m. Two days' notice of such hearing must be given.

In proceedings under Rule 67 application may be made to the court on return of process to fix a day for hearing.

RULE G.

The following shall be preferred causes:

1. Where the property shall be in the actual custody of the marshal.
2. For seaman's wages.
3. Where all the testimony has been taken out of court.

RULE H.

Notices of the trial of issues shall be for the first day of the term, unless otherwise ordered, and parties claiming a preference under Rule G shall state their intention to do so in the note of issue filed with the Clerk, and also in the notice of trial served on the opposite party. Eight days' notice of trial or argument shall be served on the proctor for the opposite party.

RULE I.

In the argument of a cause on final hearing, not more than one hour shall be occupied by counsel on either side. In the argument of a motion, not more than twenty minutes shall be occupied by counsel on either side.

RULE J.

Counsel for respective parties, in a cause argued and submitted on final hearing, shall, within ten days thereafter, hand in their briefs to the Clerk of the Court, unless the time herein specified is enlarged by express permission of Court. Counsel failing to comply with this rule shall be deemed to have waived presenting briefs.

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RULES
OF THE
DISTRICT COURT OF THE UNITED STATES
FOR THE
DISTRICT OF NEW JERSEY.

Adopted March 1, 1910.

GENERAL RULES.

1.

The seal of this Court shall consist of the coat-of-arms of the United States, with the device of the horse-head of the coat-of-arms of the State of New Jersey placed upon the shield, and the words, "District Court of the United States, District of New Jersey," in the outer rim, surrounding said coat-of-arms.

2.

Proctors and advocates of any Circuit or District Court of the United States, and attorneys and counselors of the Supreme Court of the United States, or of the Supreme Court of the State of New Jersey, may be admitted as proctors, advocates, attorneys, and counselors, on motion, upon taking the oath prescribed by the constitution and laws of the United States, and signing the roll.

3.

All libels, bills, petitions, and other proceedings, to be filed, shall be plainly and fairly engrossed, without interlineations or erasures materially defacing them, and shall be indorsed with the name and address of the attorney, solicitor, or proctor in whose behalf they shall be filed. If papers not conforming to this rule are offered, the Clerk shall require the allocatur of the Judge to be indorsed thereon before he places them on the files.

4.

All papers shall be indorsed by the Clerk with the day and hour of filing, but he may, upon being so requested, indorse papers received by mail of the day and hour appearing in the postmark on the envelope containing them.

5.

No original papers or records shall be taken from the Court House building (except in the custody of the Clerk) without a written order from the Judge.

6.

All process shall be signed by the Clerk, and shall bear the seal of the Court.

7.

All process, mesne and final, and all papers requiring to be served, shall be executed or served by the Marshal, or one of his deputies, unless the Court shall otherwise order.

8.

In all cases of sales of property by the Marshal, he shall annex to his return vouchers for all his disbursements, and shall make affidavit that the services charged for were actually and necessarily performed, and the disbursements actually incurred and paid as therein stated.

9.

All moneys which shall be paid into this Court shall be forthwith deposited by the Clerk in the First National Bank of Trenton, a designated depository of the United States, in the name and to the credit of this Court, and shall be drawn by check, signed by the Judge and countersigned by the Clerk; *Provided*, that nothing herein shall be construed to prevent the delivery of any such money, upon security, under the direction of the Court.

10.

The Clerk is authorized to tax or certify bills of costs, and to sign judgments, and also to take acknowledgment of the satisfaction of judgments, and all affidavits and oaths, out of Court as in open Court, in all cases where the same are not required by law to be taken in open Court. And all bills of costs and charges, to be paid under any order or decree of this Court, shall be taxed and filed with the Clerk, before payment thereof, and shall contain proper and genuine vouchers for all charges, other than to any officer of the Court, and four days' notice of all taxation of costs shall be given to all parties concerned.

11.

No proctor, solicitor, or attorney shall be accepted as bail, or security for costs, in any suit pending in the Court, except by special leave of the Court.

12.

Service of papers upon proctors, solicitors, or attorneys, not residing in this District, may be by delivering the same to the Clerk of this Court, the time of such service to be at least one day longer than required for a similar service upon a resident of the District.

13.

Ten days before the commencement of each regular term, the Clerk shall make up the term calendar, which shall contain all causes in which the notice for trial or argument, with proof of service thereof on the opposite party at least fifteen days before the opening of said term, shall have been filed with the Clerk at or prior to that time. In making up such calendar, he shall place first issues of fact, according to the date of issue, giving cases in which the Government is concerned the preference, and then issues of law and argument, according to the date of the issue or motion, giving the Government the like preference. Causes noticed for any day during the term shall be placed at the foot of the calendar, in the order in which the notices for trial shall be filed.

14.

The writ of *hæri facias*, or of *venditioni exponas*, shall be the final process in this Court, in all cases for the sale of property.

15.

Whenever after judgment or decree for a sum certain, and before execution issued thereon, any party shall pay into Court the amount thereof, together with the costs taxed; or whenever the Marshal shall return process of execution satisfied, and pay the amount of the judgment or decree, and costs upon which such process issued, into Court, the Clerk shall forthwith, and without other authorization, enter satisfaction of record of such judgment or decree, at the charge of the party in whose favor such judgment or decree may be rendered.

16.

In cases of violation of the Revenue or Internal Revenue laws, and in such cases as the Court may, upon motion, grant leave, the District Attorney may proceed against the parties offending by *Criminal Information*.

17.

All bail bonds entered before the different United States Commissioners for the District of New Jersey and all moneys deposited as security on such bonds, shall be transmitted to the Clerk of this Court at Trenton by the first possible mail.

18.

Upon any indictment found by the Grand Jury, or upon any criminal information filed by the District Attorney, or upon the failure of the defendant to appear, pursuant to recognizance given, after indictment or information filed, the Clerk shall, at the instance of the District Attorney, issue a *Bench Warrant* for the apprehension of the defendant; and when default is made by any party or witness in any criminal proceeding, the Clerk shall forthwith issue a *scire facias* thereon.

19.

No application for a writ of habeas corpus in favor of a person restrained of his liberty by virtue of the process of any court of the State of New Jersey will be considered unless the attorney representing the petitioner be a member of the Bar of the Supreme Court of the State of New Jersey and also a member of the Bar of this Court.

20.

When a fine is imposed by the Court on any person, for any cause, and the party is not thereupon committed, and such fine is not discharged within thirty days after the same shall have been imposed, the Clerk shall issue to the Marshal a writ of *fieri facias*, commanding him to levy and make such fine of the goods and chattels, or in default thereof, of the lands and tenements of the party.

21.

Judgment by default, in all causes in which the United States are plaintiffs, or are interested, may be entered up at any time in vacation, as of the preceding term.

22.

In summary proceedings *in rem*, in behalf of the United States, when the property is under seizure by the Collector, the Clerk may, at the instance of the District Attorney, omit the attachment clause in the monition issued.

And service of such monition shall be upon the Collector, or the person having the property in charge, and also upon the owner or agent, if known to the Marshal.

23.

Process on libels, and summons in actions at law, may be made returnable on any day, at a stated or special term, but writs for the sale of property, under any order or decree of the Court, and all final process shall be returnable at a stated term, unless otherwise ordered by the Judge.

24.

Unless otherwise specially provided for in these rules, five days' notice shall be given the opposite party for all motions.

25.

In all cases not provided for by the rules of this Court, the rules of the Circuit Court of the United States for this District (whether adopted before or after these rules), so far as the same may be applicable, shall regulate the practice of this Court; and, when there is no rule of the Circuit Court to apply, then the rules of the Supreme Court of this State, now in force, so far as the same may be applicable, shall govern.

26.

The arrangement of rules under distinct heads of practice is not to prevent their governing every mode of procedure in Court to which they may be applicable; but, if different provisions are adopted, the rules in collision are to be restricted each to the head of practice under which it may be classed.

27.

All rules previously adopted, in conflict with any of these rules, are hereby repealed, and these Rules shall go into effect on March 1, 1910.

NEW JERSEY DISTRICT ADMIRALTY RULES.

1.

Libels (except on behalf of the United States) praying an attachment *in rem* or *in personam*, or demanding the answer of any party on oath, shall be verified by the oath or affirmation of the libellant.

2.

Tuesday of each week is appointed as a special sessions of the Court (except the stated term be then in session), at which the same proceedings may be taken in causes of admiralty and maritime jurisdiction as at a stated term.

3.

In case the Court is not in session at the return of process required to be acted upon in open Court, proceedings shall be deemed continued to the next sitting of the Court (either stated or special), at which time the like proceedings may be had thereupon as if then returnable.

4.

On proclamation, after due return of process, the libellant shall be entitled to a decree of default or contumacy, according to the nature of the case.

5.

Notice of the arrest of the property by attachment *in rem*, in behalf of individual suitors, shall be published and affixed in the manner directed by Act of Congress in the case of seizures on the part of the United States, except when the Judge by special order directs a shorter notice, or the amount in dispute does not exceed the sum of fifty dollars, and except that, instead of the substance of the libel, a short statement of its purport may be given.

6.

Where the amount in dispute does not exceed the sum of fifty dollars, the monition may be made returnable in six days after the issuing of the same.

7.

Notice of sale of property after condemnation in suits *in rem* (except under Internal Revenue laws, and in Customs cases, and on seizure by the United States, which shall be fifteen days) shall be six days, unless otherwise specially directed in the decree of condemnation.

8.

No process *in rem* shall be issued, nor shall any appearance or answer be received, or claim or intervention be allowed (except on the part of the United States), unless a stipulation in the sum of two hundred and fifty dollars shall be first entered into by the party, and at least one surety, resident in the District, conditioned that the principal shall pay all costs awarded against him by the Court, or, in case of appeal, by the Appellate Court, or the said sum be deposited with the Clerk of this Court in lieu of such stipulation.

But seamen, suing for wages in their own right and for their own benefit, and salvors coming into port in possession of the property libeled, are exempted from the operation of this rule.

9.

The Marshal shall be allowed for the custody of a vessel, her tackle, etc., his actual expenses, not to exceed the sum of two dollars and a half a day (of twenty-four hours).

10.

No property in the custody of any officer of the Court shall be delivered up without the order of the Court, but such order may be entered, of course, by the Clerk, on the filing of a written consent thereto by the proctor in whose behalf it is detained, and also after appraisement and bond or stipulation for value, duly executed and approved.

11.

Bonds given under Section 941 of the Revised Statutes of the United States, and stipulations to release property from attachment or arrest may be taken out of Court on short notice before the Clerk, or a commissioner, under a *dedimus potestatem*, and such officer shall, if required by the opposite party, examine the sureties under oath as to their sufficiency, and annex their depositions.

Sureties in stipulations for costs may be examined in like manner on demand thereof served upon the proctors of the party giving the stipulation, who shall thereupon give reasonable notice of the time and place of the justification of sureties.

12.

In all cases of bonds and stipulations in civil and admiralty causes, any party having an interest in the subject matter may at any time on two days' notice, move the Court on special cause shown for greater or better

security; and any order made thereon may be enforced by attachment, or otherwise.

13.

When a ship or vessel is under attachment no monition upon any subsequent libel shall be executed by the Marshal, nor shall any fees be allowed him on the same, unless the first libel shall be dismissed or discontinued, in which case the process on the second libel filed shall be executed in the same manner as the first.

And if the return day thereof shall be too short to allow the notice required, the same shall be returned to the Clerk, and an *alias* process be issued forthwith.

And until the property attached shall have been sold, and the proceeds thereof paid into Court, or until the same shall have been duly bonded, process shall issue upon each and every libel filed, to be executed only as above stated, and *alias* or *pluries* process shall be issued, as the circumstances of the case may require.

14.

In suits for seamen's wages, any mariner on the same voyage, not made a party, may by short petition to the Court, in any stage of the cause, previous to the final distribution of the fund in Court, or discharge of the defendant and his sureties, be joined as libellant in the cause; but no costs shall be allowed for the proceedings taken to make him a party.

15.

In admiralty and maritime causes wherein the matter in demand does not exceed fifty dollars, instead of filing a libel, the libellant in suits by individuals, may, by short petition, state the matter of his demand, and the amount or value thereof, or present an account stated, or a bill of charges by items, on filing either of which process may issue, as on the filing of a libel in ordinary cases.

And the notices to be published in such suits need contain only the title of the suit, the cause of action, the amount demanded, the day and place of the return of the monition, and be subscribed with the names of the marshal and proctor of the libellant.

16.

A tender *inter partes* shall be of no avail on defense, or in discharge of costs, unless on suit brought, and before answer, plea, or claim filed, the same tender is deposited in Court to abide the order or decree to be made in the matter, and such tender must include taxable costs then accrued.

17.

A guardian *ad litem* will be appointed, on a petition, duly verified by oath or affirmation, stating a proper case for such appointment; and the guardian shall give stipulations for costs, etc., the same as if he was personally the party in interest.

18.

Infants may sue by *prochein ami*, to be first approved by the Court; the *prochein ami* to give stipulation for costs in the same manner as the infant would if of full age.

19.

Suits may be prosecuted or defended *in forma pauperis* by express allowance of the Court. In such case the pauper will be discharged of all stipulations or liabilities for costs.

20.

A claim or answer may be filed at any time after the service of process and before default entered. The claimant may except to the libel for surplusage, irrelevancy, impertinence, or scandal, and if it be adjudged by the Court insufficient, and be not amended within four days thereafter, it shall be dismissed with costs. The libellant may except to the claim or answer for insufficiency or indistinctness within four days after the same is filed, and the party claiming or answering shall give two days' notice for hearing such exceptions for the earliest day of jurisdiction thereafter, in default whereof the exceptions shall be considered allowed.

21.

In all uncontested cases, upon a decree *pro confesso*, and in all contested cases where an issue of fact is raised, or where a decree for an amount to be ascertained is entered, a reference shall be made to a Commissioner, to be designated by the Court, to hear the parties and report; but the Court will, in its discretion, upon the application of either party, made on or before the day appointed by such Commissioner for the reference, hear orally the testimony in such cases as it may deem advisable.

22.

Upon all references it shall be the duty of the Commissioner to give two days' notice to all known parties in interest, or their proctors, of the time and place of such reference; and he shall also notify such parties of the filing of his report.

23.

On all references either party may produce and use the pleadings and proofs, filed in the cause, or heard in Court.

24.

Upon the filing of the Commissioner's report, either party may except thereto, and set down the exceptions for hearing, upon two days' notice to the other, for the first stated or special session after the report is filed; and, unless such exceptions be filed, or it be otherwise ordered by the Court, a decree of confirmation may be entered, on motion, without notice.

25.

In all issues brought to hearing, argument, or trial, four days' previous notice shall be served upon the proctor of the opposite party.

26.

In cases of a fund in Court, there shall be an order of distribution entered by the Clerk, either annexed to, or separate from the final decree stating the amounts to be distributed and the parties to whom the same are awarded.

27.

Upon the entry of a decree *pro confesso*, a writ of *venditioni exponas* shall be issued to the Marshal forthwith (unless stayed by order of the Court), directing a sale of the property attached, and the payment of the proceeds thereof into Court.

The Court will also, in its discretion, order a sale of such property (upon an affidavit of its perishableness or chargeableness), and the payment of the proceeds into Court.

28.

When proceedings on a decree shall not be stayed by an appeal, and the decree shall not be satisfied in ten days after notice to the proctor of the party against whom it shall be rendered, a summary decree may be entered against the sureties of such party, and execution issue forthwith; but the same may be discharged on the performance of the decree and payment of all costs.

29.

In appealable cases, ten days from the time of service of a copy of the decree on the opposite proctor, with notice of its entry, shall be allowed to enter an appeal, within which time the decree shall not be executed. The security for damages and costs described in Rule 13 of the Circuit Court of Appeals shall be given within ten days after the filing of the notice of appeal, or execution may issue as of course to enforce the decree of this Court, unless otherwise ordered by the Court.

30.

For the purpose of convenience to suitors in other than possessory or petitory actions, and in such actions upon the consent of the proctors representing all of the adverse interests, all bonds and stipulations given pursuant to law, and approved by James D. Carpenter, Jr., 76 Montgomery St., Jersey City, N. J., S. Howell Jones, 800 Broad St., Newark, N. J., J. Willard Morgan, 207 Market St., Camden, N. J., and George T. Cranmer, Post Office Building, Trenton, N. J., United States Commissioners, shall be considered as approved by a Judge of this Court, and the Marshal is authorized to act as if such approval were made by a Judge of this Court.

31.

The Clerk is authorized to appoint one or more deputy clerks in admiralty in such parts of the district as he may see fit, to be approved by the Court, for the purpose of receiving and filing libels and issuing process thereon, and such deputy clerks in admiralty are required to forward all papers received and filed by them, together with deposits and fees therefor, to the Clerk of this Court, by the first mail after the same are so received and filed.

32.

The following of the General Rules of this Court, to wit:—Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 19, 20 and 21, shall be considered Rules in Admiralty.

33.

In all cases not provided for by the Rules of this Court, the Rules and practice of the Supreme Court, or of the Circuit Court of the United States for this district, for the time being (whether adopted before or after these Rules) so far as the same may be applicable, shall regulate the practice of this Court.

34.

All Rules previously adopted in conflict with any of these Rules, are hereby repealed, and these Rules shall go into effect on March 1, 1910.

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GENERAL RULES
OF THE
UNITED STATES CIRCUIT COURT OF APPEALS,
FOR THE SECOND CIRCUIT.

(See C. C. A. Admiralty Rule XIX, post, p. 511.)

1.

NAME.

The court adopts "United States Circuit Court of Appeals for the Second Circuit" as the title of the court.

2.

SEAL.

The seal shall contain the words "United States" on the upper part of the outer edge; and the words "Circuit Court of Appeals" on the lower part of the outer edge, running from left to right; and the words "Second Circuit" in two lines, in the centre, with a dash beneath.

[Here insert Seal.]

3.

TERMS.

One term of this court shall be held annually at the city of New York on the last Tuesday of October, and shall be adjourned to such times and places as the court may from time to time designate.

4.

QUORUM.

1. If, at any time, a quorum does not attend on any day appointed for holding it, any judge who does attend may adjourn the court from time to time, or, in the absence of any judge, the clerk may adjourn the court from day to day. If, during a term, after a quorum has assembled, less than that number attend on any day, any judge attending may adjourn the court from day to day until there is a quorum, or may adjourn without day.

2. Any judge attending when less than a quorum is present may make all necessary orders touching any suit, proceeding, or process depending in or returned to the court, preparatory to hearing, trial, or decision thereof.

5.

CLERK.

1. The clerk's office shall be kept at the place designated in the act creating the court at which a term shall be held annually.

2. The clerk shall not practice, either as attorney or counsellor, in this court or in any other court while he shall continue to be clerk of this court.

3. He shall, before he enters on the execution of his office, take an oath in the form prescribed by section 794 of the Revised Statutes, and shall give bond in a sum to be fixed, and with sureties to be approved by the court, faithfully to discharge the duties of his office and seasonably to record the decrees, judgments, and determinations of the court. A copy of such bond shall be entered on the journal of the court, and the bond shall be deposited for safe-keeping as the court may direct.

4. He shall not permit any original record or paper to be taken from the court-room or from the office, without an order from the court.

6.

MARSHAL, CRIER, AND OTHER OFFICERS.

1. Every marshal and deputy marshal shall, before he enters on the duties of his appointment, take an oath in the form prescribed by section 782 of the Revised Statutes, and the marshal shall, before he enters on the duties of his office, give bond in a sum to be fixed, and with sureties to be approved by the court, for the faithful performance of said duties by himself and his deputies. Said bond shall be filed and recorded in the office of the clerk of the court.

2. The marshal and crier shall be in attendance during the sessions of the court, with such number of bailiffs and messengers as the court may, from time to time, order.

7.

ATTORNEYS AND COUNSELLORS.

All attorneys and counsellors admitted to practice in the Supreme Court of the United States, or in any Circuit Court of the United States, shall become attorneys and counsellors in this court on taking an oath or affirmation in the form prescribed by Rule 2 of the Supreme Court of the United States and on subscribing the roll; but no fee shall be charged therefor.

8.

PRACTICE.

The practice shall be the same as in the Supreme Court of the United States, as far as the same shall be applicable.

9.

PROCESS.

All process of this court shall be in the name of the President of the United States, and shall be in like form and tested in the same manner as process of the Supreme Court.

10.

BILL OF EXCEPTIONS.

The judges of the Circuit and District Courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts: and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

11.

ASSIGNMENT OF ERRORS.

The plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record and be printed with it. When this is not done, counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

12.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall be allowed to be taken to the admissibility of any deposition, deed, grant, exhibit, or translation found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

13.

SUPERSEDEAS AND COST BONDS.

1. Supersedeas bonds in the Circuit and District Courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment

or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the suit, as in real actions and replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, or where the proceeds thereof, or a bond for the value thereof, is in the custody of the court, indemnity in all such cases will be required only in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit and just damages for delay, and costs and interest on the appeal.

2. On all appeals from any interlocutory order or decree granting or continuing an injunction in a Circuit or District Court, the appellant shall, at the time of the allowance of said appeal, file with the clerk of such Circuit or District Court a bond to the opposite party in such sum as such court shall direct, to answer all costs if he shall fail to sustain his appeal.

14.

WRITS OF ERROR, APPEALS, RETURN, AND RECORD.

1. The clerk of the court to which any writ of error may be directed shall make a return of the same by transmitting a true copy of the record, bill of exceptions, assignment of errors, and all proceedings in the case, under his hand and the seal of the court.

2. In all cases brought to this court by writ of error or appeal, to review any judgment or decree, the clerk of the court by which such judgment or decree was rendered shall annex to and transmit with the record a copy of the opinion or opinions filed in the case.

3. No case will be heard until a complete record, containing in itself, and not by reference, all the papers, exhibits, depositions, and other proceedings, which are necessary to the hearing in this court, shall be filed.

4. Whenever it shall be necessary or proper, in the opinion of the presiding judge in any Circuit or District Court, that original papers of any kind should be inspected in this court upon writ of error or appeal, such presiding judge may make such rule or order for the safe-keeping, transporting and return of such original papers as to him may seem proper; and this court will receive and consider such original papers in connection with the transcript of the proceedings.

5. All appeals, writs of error, and citations must be made returnable not exceeding 30 days from the day of signing the citation, whether the return day fall in vacation or in term time, and be served before the return day.

6. The record in cases of admiralty and maritime jurisdiction shall be made up as provided in General Admiralty Rule No. 52 of the Supreme Court.

15.

TRANSLATIONS.

Whenever any record transmitted to this court upon a writ of error or appeal shall contain any document, paper, testimony, or other proceeding

in a foreign language, and the record does not also contain a translation of such document, paper, testimony, or other proceeding, made under the authority of the inferior court, or admitted to be correct, the record shall not be printed; but the case shall be reported to this court by the clerk, and the court will thereupon remand it back to the inferior court, in order that a translation may be there supplied and inserted in the record.

16.

DOCKETING CASES.

1. It shall be the duty of the plaintiff in error or appellant to docket the case and file the record thereof with the clerk of this court by or before the return day whether in vacation or in term time. But for good cause shown the justice or judge who signed the citation, or any judge of this court, may enlarge the time by or before its expiration, the order of enlargement to be filed with the clerk of this court. If the plaintiff in error or appellant shall fail to comply with this rule, the defendant in error or appellee may have the cause docketed and dismissed upon producing a certificate, whether in term time or vacation, from the clerk of the court wherein the judgment or decree was rendered, stating the case and certifying that such writ of error or appeal, has been duly sued out or allowed. And in no case shall the plaintiff in error or appellant be entitled to docket the case and file the record after the same shall have been docketed and dismissed under this rule, unless by order of the court.

2. But the defendant in error or appellee may, at his option, docket the case and file a copy of the record with the clerk of this court; and if the case is docketed and a copy of the record filed with the clerk of this court by the plaintiff in error or appellant within the period of time above limited and prescribed by this rule, or by the defendant in error or appellee at any time thereafter, the case shall stand for argument at the term.

3. Upon the filing of the transcript of a record brought up by writ of error or appeal, the appearance of the counsel for the party docketing the case shall be entered.

17.

DOCKET.

The clerk shall enter upon a docket all cases brought to and pending in the court in their proper chronological order, and such docket shall be called at every term, or adjourned term; and if a case is called for hearing at two terms successively, and upon the call at the second term neither party is prepared to argue it, it will be dismissed at the cost of the plaintiff in error or appellant, unless sufficient cause is shown for further postponement.

18.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts

on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for such *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

19.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personality or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within sixty days, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed, and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if it be erroneous: *Provided, however,* That a copy of every such order shall be personally served on said representatives at least thirty days before the expiration of such sixty days.

2. When the death of a party is suggested, and the representatives of the deceased do not appear within ten days after the expiration of such sixty days, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a Circuit or District Court of the United States shall desire to prosecute a writ of error or appeal to this court, from any final judgment or decree, rendered in the Circuit or District Court, and at the time of suing out such writ of error or appeal, the other party to the suit shall be dead and have no proper representative within the jurisdiction of the court which rendered such final judgment or decree, so that the suit cannot be revived in that court, but shall have a proper representative in some state or territory of the United States, or in the District of Columbia, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the filing of the record in this court the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered such judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, or in the District of Columbia, and stating therein the name and character of such representative, and the state or territory or district in which such representative resides; and upon such suggestion,

he may on motion obtain an order that, unless such representative shall make himself a party within ninety days, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed if the same be erroneous: *Provided, however,* That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least thirty days before the expiration of such ninety days: *Provided, also,* That in every such case, if the representative of the deceased party does not appear within ten days after the expiration of such ninety days, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate: *And, provided, also,* That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

20.

DISMISSING CASES.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

21.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

22.

PARTIES NOT READY.

1. Where no counsel appears, and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed.

2. Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff, and to give judgment according to the right of the case.

3. When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

23.

PRINTING RECORDS.

On the filing of the transcript in every case, the clerk shall forthwith cause fifteen copies of the same to be printed, and shall furnish three copies thereof to each party, at least thirty days before the argument, and shall file nine copies thereof in his office. The parties may stipulate in writing that parts only of the record shall be printed, and the case may be heard on the parts so printed; but the court may direct the printing of other parts of the record. The clerk shall be entitled to demand of the appellant, or plaintiff in error, the cost of printing the record, before ordering the same to be done. If the record shall not have been printed when the case is reached for argument, for failure of a party to advance the costs of printing, the case may be dismissed. In case of reversal, affirmance, or dismissal, with costs, the amount paid for printing the record shall be taxed against the party against whom costs are given.

24.

BRIEFS.

1. The counsel for the plaintiff in error, or appellant, shall file with the clerk of this court, at least twenty days before the case is called for argument, ten copies of a printed brief, one of which shall on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved, in the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk, at least ten days before the case is called for hearing, ten copies of his printed brief, one of which shall, on application, be furnished to each of the counsel on the opposite side. His brief shall be of a like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion, and when a defendant in error or an appellee is in default he will not be heard, except on consent of his adversary, and by request of the court.

6. When no counsel appears for one of the parties, and no printed brief or argument is filed, only one counsel will be heard for the adverse party; but if a printed brief or argument is filed, the adverse party will be entitled to be heard by two counsel.

25.

ORAL ARGUMENTS.

1. The plaintiff in error or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Upon writs of error, appeals in admiralty, appeals from orders granting a preliminary injunction and in appeals in customs cases, one hour on each side, and in other cases one hour and a half will be allowed. But in all cases where there are no difficult questions of law and the amount involved does not exceed \$500, and in appeals and petitions for review in bankruptcy, only one-half hour on each side will be allowed. No more time than above specified will be allowed without special leave of the court granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side at their discretion, provided always that a fair opening of the case shall be made by the party having the opening and closing arguments.

26.

FORM OF PRINTED RECORDS, ARGUMENTS, AND BRIEFS.

All arguments and briefs printed for the use of the court must be printed upon a page eleven inches long by seven inches wide and must have a margin of at least two inches in width.

27.

COPIES OF RECORDS AND BRIEFS.

The clerk shall carefully preserve in his office one copy of the printed record in every case submitted to the court for its consideration, and of all printed motions, briefs and arguments filed therein.

28.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the judge delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

29.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a judge who concurred in the judgment desires it, and a majority of the court so determines.

30.

INTEREST.

1. In cases where a writ of error is prosecuted in this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the state or territory where such judgment was rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases of equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed, if specially directed by the court.

31.

COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be taxable in this court as part of such costs, and the clerk of the court below shall send to the clerk of this court with the transcript of record a certificate of the cost of such transcript.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

6. In all cases certified to the Supreme Court or removed thereto by *certiorari* or otherwise, the fees of the clerk of this court shall be paid before a transcript of the record shall be transmitted to the Supreme Court.

32.

MANDATE.

In all cases finally determined in this court, a mandate or other proper process in the nature of a *procedendo*, shall be issued, on the order of this court, to the court below, for the purpose of informing such court of the proceedings in this court, so that further proceedings may be had in such court as to law and justice may appertain.

33.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of *habeas corpus*, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance, as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge dis-

charging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the appellate court, except where, for special reasons, sureties ought not to be required.

34.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, except customs cases, shall be placed in the custody of the clerk of this court at least ten days before the case is heard or submitted.

2. Three copies must be furnished for the use of the court of any maps, charts, plans, diagrams, or other papers or documents which it is intended to refer to on the argument, and which are not contained in the transcript of record as certified from the court below.

3. All exhibits of material in customs cases must be filed with the clerk at the time of filing the transcript of record, and such exhibits will be returned to the clerk of the circuit court at the expiration of 60 days from the decision of the case by this court. All other models, diagrams, and exhibits of material placed in the custody of the clerk for the inspection of the court on the hearing of a case must be taken away by the parties within one month after the case is decided. It shall be the duty of the clerk to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within the time above specified, he shall destroy them, or make such other disposition of them as to him may seem best.

35.

1. An appeal or writ of error from a Circuit Court or a District Court to this Court in the cases provided for in Sections 6 and 7 of the Act entitled "An Act to establish Circuit Courts of Appeals and to define and regulate in certain cases the jurisdiction of the Courts of the United States and for other purposes," approved March 3, 1891, and Acts to amend said Act, approved February 18, 1895, and January 20, 1897, may be allowed in term time or vacation by the circuit justice or by any circuit judge within the circuit or by any district judge within his district, and the proper security be taken and the citation be signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error to this Court is allowed in the case of a conviction of an infamous crime or in any other criminal case in which it will lie, the Circuit Court or District Court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

36.

1. In all cases the plaintiff in error or appellant on docketing a case and filing a record, shall enter into an undertaking with the clerk, for the payment of his fees, or otherwise satisfy him in that behalf.

2. At the expiration of ten days after a case has been decided, the order or decree thereon will be entered by the court, and the clerk will thereupon prepare and tax the bill of costs and issue the mandate. Within said ten days the parties may file with the clerk their proposed orders or decrees and bills of costs with proof of service of the same upon the opposing attorneys.

37.

In the preparation of briefs any citations made from "Federal Cases" must be accompanied by the citation of the original report of the case, and where a citation is made from the American Bankruptcy Reports, the citation in the Federal Reporter or United States Supreme Court Reports must also be given. If the case is not reported elsewhere than in Federal Cases or American Bankruptcy Reports the fact must be so stated.

38.

Petitions to review orders in bankruptcy filed under the provisions of Section 24B of the Bankruptcy Act, must be filed and served within ten days after the entry of the order sought to be reviewed, and a transcript of the record of the proceedings in the Bankruptcy Court of the matter to be reviewed must be filed and the cause docketed within thirty days thereafter, but the judge of the Bankruptcy Court may for good cause shown enlarge the time for filing the petition or record, the order of enlargement to be made and filed with the clerk of this Court before the expiration of the times hereby limited for filing the petition and record respectively.

RULES IN ADMIRALTY.

UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

Adopted July 1, 1892. Amended October 5, 1892.

1.

APPEALS AND NEW PLEADINGS.

An appeal to the Circuit Court of Appeals shall be taken by filing in the office of the clerk of the District Court, and serving on the proctor of the adverse party a notice signed by the appellant or his proctor that the party appeals to the Circuit Court of Appeals from the decree complained of.

The appeal shall be heard on the pleadings and evidence in the District Court, unless the Appellate Court, on motion, otherwise order.

2.

NOTICE AND BOND.

Sec. 1. When a notice of appeal is served, the appellant shall file in the clerk's office of the District Court a bond for costs of the appeal, with sufficient surety, in the sum of \$250, conditioned that the appellant shall prosecute his appeal to effect and pay the costs, if the appeal is not sustained. Such security shall be given within ten days after filing the notice, or the appeal shall be deemed abandoned, and the decree of the court below enforced, unless otherwise ordered by a judge of this court.

Sec. 2. And if the appellant desires to stay the execution of the decree of the court below, the bond which he shall give shall be a bond with sufficient surety in such further sum as the judge of the District Court or a judge of this court shall order, conditioned that he will abide by and perform whatever decree may be rendered by this court in the cause, or on the mandate of this court by the court below.

Sec. 3. The appellant shall, on filing either of such bonds, give notice of such filing, and of the names and residence of the sureties, and if the appellee, within two days, excepts to the sureties, they shall justify, on notice, within two days after such exception.

3.

REVIEW IN PART ONLY.

The appellant may also, at his option, state in his notice of appeal that he desires only to review one or more questions involved in the cause, which questions must be clearly and succinctly stated; and he shall be concluded in this behalf by such notice, and the review upon such an appeal shall be limited to such question or questions.

4.

APOSTLES ON APPEAL TO CONTAIN.

Sec. 1. The apostles, on an appeal to this court, shall, in cases where a general notice of appeal is served, consist of the following:

(1). A caption exhibiting the proper style of the court and the title of the cause, and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who have become parties before the appeal, if any change has taken place; the several dates when the respective pleadings were filed; whether or not the defendant was arrested, or bail taken, or property attached, or arrested, and if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question was referred to a commissioner, or commissioners, and if so, the result of the proceedings and report thereon; the date of the entry of the interlocutory and final decrees; and the date when the notice of appeal was filed.

(2). All the pleadings, with the exhibits annexed thereto.

(3). All the testimony and other proofs adduced in the cause.

(4). The interlocutory decree and any order of the court which appellant may desire to have reviewed on the appeal.

(5). Any report of a commissioner or commissioners to which exception may have been taken, with the order or orders of the court respecting the same, and the exceptions to the report, and so much of the testimony taken in the proceeding as may be necessary to a review of the exceptions.

(6). All opinions of the court, whether upon interlocutory questions or finally deciding the cause.

(7). The final decree, and the notice of appeal; and

(8). The assignments of error.

Sec. 2. All other papers shall be omitted unless otherwise ordered by the judge who heard the cause.

Sec. 3. Where the appellant shall appeal specially and seek only to review one or more questions involved in the cause, the apostles may, by stipulation between the proctors for the respective parties, contain only such papers and proceedings and evidence as are necessary to review the questions raised by the appeal.

5.

CERTIFYING RECORDS.

The appellants shall, within thirty days after giving notice of appeal, procure to be filed in this court the apostles certified by the clerk of the

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District Court, or in case of a special appeal, the stipulated record, with the certification by the said clerk of all papers contained therein on file in his office.

6.

IF APPEARANCE OF APPELLEE NOT ENTERED.

If the appellee does not cause his appearance to be entered in this court within ten days after service on his proctor of notice that the apostles are filed in this court, the appellant may proceed *ex parte* in the cause, and have such decree as the nature of the case may demand.

7.

NEW ALLEGATIONS, ETC.

Upon sufficient cause shown, this court or any judge thereof, may allow either appellant or appellee to make new allegations or pray different relief, or interpose a new defence, or take new proofs. Application for such leave must be made within fifteen days after the filing of the apostles and upon at least four days notice to the adverse party.

8.

NEW PLEADINGS—NEW TESTIMONY.

If leave be granted to make new allegations, pray different relief or interpose a new defence, the moving party shall, within ten days thereafter, serve such new pleading, duly verified, on the adverse party, who shall, if such pleading be a libel, within twenty days answer on oath.

If leave be given to take new testimony, the same may be taken and filed within thirty days after the entry of the order granting such leave, and the adverse party may take and file counter testimony within twenty days after such filing.

9.

NEW TESTIMONY—HOW TAKEN.

Such testimony shall be taken by deposition before any United States commissioner, or notary public, upon reasonable notice in writing given to the opposite party; or by commission issued out of this court with interrogatories annexed. Upon proper cause shown, the court may grant an open commission.

10.

PRINTING NEW PLEADINGS AND TESTIMONY.

If new pleadings are filed or testimony taken in this court, the same shall also be printed and furnished by the clerk, as in the 23d General Rule provided.

11.

MOTIONS.

All motions shall be made upon at least four days notice.

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12.

WRIT OF INHIBITION.

A writ of inhibition may be awarded by this court on motion of the appellant, to stay proceedings in the court below when circumstances require.

13.

MANDAMUS.

A mandamus may, in like manner, be obtained, to compel a return of the apostles when unreasonably delayed by the clerk, or court, below.

14.

CASES TO BE PLACED ON DOCKET.

Each case shall be placed on the docket as soon as the printing of the apostles is completed by the clerk.

15.

BRIEFS.

Sec. 1. Counsel for the appellants shall file with the clerk of this court, at least twenty days before the case is called for argument, ten copies of a printed brief and shall at the same time serve two copies thereof on the proctors of record, or on the counsel engaged upon the opposite side. This brief shall contain in order here stated:

(1). A statement of the nature of the appeal, the court from which the appeal is taken, and a concise abstract or statement of the case, presenting succinctly the questions involved, and the manner in which they were raised.

(2). If the pleadings have been amended in this court or new proofs have been taken, it shall be stated what amendments have been made, and in what respect the new proofs have changed, or tended to change, the cause as made in the court below.

(3). A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the folios of the record or to the numbers of the questions, and the authorities relied upon in support of each point.

Sec. 2. The counsel for the appellee shall file with the clerk of the court ten printed copies of his brief and serve two copies thereof at least ten days before the case is called for argument. His brief shall be of a like character with that required of the appellant, and in case new proofs are taken on behalf of the appellee, the brief shall so state, and wherein the new proofs have changed the case as made in the court below.

Sec. 3. The reasonable expense of printing briefs shall be an item of taxable costs.

16.

MANDATES.

The decrees of this court shall direct that a mandate issue to the court below.

17.

EXTENSION OF TIME.

The time specified in the foregoing rules for any proceeding may be extended by order of a judge of this court.

18.

WHEN RULES OF DISTRICT COURTS TO APPLY.

In all matters, in civil causes of admiralty and maritime jurisdiction, not expressly provided for by the foregoing rules of this court, the rules of practice of the District Court of the district in which the cause was decided, being in force at the time, (not being inconsistent with these rules), will be adopted so far as may seem proper.

19.

WHAT GENERAL RULES SHALL BE DEEMED ADMIRALTY RULES.

The following of the general rules of this court, and no others, shall be deemed admiralty rules, viz.: Rules 3, 4, 5, 6, 7, 9, 11, 12; section 4 of Rule 14; Rules 15, 16, 17, 18, 19, 20, 21, 22, 23, section 5 of General Rule 24; Rules 25, 26, 27, 28, 29; section 4 of Rule 30; Rules 31, 32, 34, 36 and 37.

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RULES

OF THE

SUPREME COURT OF THE UNITED STATES.

1.

CLERK.

1. The clerk of this court shall reside and keep the office at the seat of the National Government, and he shall not practice, either as attorney or counsellor, in this court, or in any other court, while he shall continue to be clerk of this court.

2. The clerk shall not permit any original record or paper to be taken from the court-room, or from the office, without an order from the court, except as provided by Rule 10.

2.

ATTORNEYS AND COUNSELLORS.

1. It shall be requisite to the admission of attorneys or counsellors to practice in this court, that they shall have been such for three years past in the Supreme Courts of the states to which they respectively belong, and that their private and professional character shall appear to be fair.

2. They shall respectively take and subscribe the following oath or affirmation, viz.:

I, _____, do solemnly swear [or affirm] that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.

3.

PRACTICE.

This court considers the former practice of the Courts of King's Bench and of Chancery, in England, as affording outlines for the practice of this court; and will, from time to time, make such alterations therein as circumstances may render necessary.

4.

BILL OF EXCEPTIONS.

The judges of the Circuit and District Courts shall not allow any bill of exceptions which shall contain the charge of the court at large to the

jury in trials at common law, upon any general exception to the whole of such charge. But the party excepting shall be required to state distinctly the several matters of law in such charge to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court.

5.

PROCESS.

1. All process of this court shall be in the name of the President of the United States, and shall contain the Christian names, as well as the surnames, of the parties.

2. When process at common law or in equity shall issue against a state, the same shall be served on the governor, or chief executive magistrate, and attorney-general of such state.

3. Process of subpoena, issuing out of this court, in any suit in equity, shall be served on the defendant sixty days before the return-day of the said process; and if the defendant, on such service of the subpoena, shall not appear at the return-day, the complainant shall be at liberty to proceed *ex parte*.

6.

MOTIONS.

1. All motions to the court shall be reduced to writing, and shall contain a brief statement of the facts and objects of the motion.

2. One hour on each side shall be allowed to the argument of a motion, and no more, without special leave of the court, granted before the argument begins.

3. No motion to dismiss, except on special assignment by the court, shall be heard, unless previous notice has been given to the adverse party, or the counsel or attorney of such party.

4. All motions to dismiss writs of error and appeals, except motions to docket and dismiss under Rule 9, must be submitted in the first instance on printed briefs or arguments. If the court desires further argument on that subject, it will be ordered in connection with the hearing on the merits. The party moving to dismiss shall serve notice of the motion, with a copy of his brief of argument, on the counsel for plaintiff in error or appellant of record in this court, at least three weeks before the time fixed for submitting the motion, in all cases except where the counsel to be notified resides west of the Rocky Mountains, in which case the notice shall be at least thirty days. Affidavits of the deposit in the mail of the notice and brief to the proper address of the counsel to be served, duly post-paid, at such time as to reach him by due course of mail, the three weeks or thirty days before the time fixed by the notice, will be regarded as *prima facie* evidence of service on counsel who reside without the District of Columbia. On proof of such service, the motion will be considered, unless, for satisfactory reasons, further time be given by the court to either party.

5. There may be united, with a motion to dismiss a writ of error or an appeal, a motion to affirm on the ground that, although the record may

36.

1. In all cases the plaintiff in error or appellant on docketing a case and filing a record, shall enter into an undertaking with the clerk, for the payment of his fees, or otherwise satisfy him in that behalf.

2. At the expiration of ten days after a case has been decided, the order or decree thereon will be entered by the court, and the clerk will thereupon prepare and tax the bill of costs and issue the mandate. Within said ten days the parties may file with the clerk their proposed orders or decrees and bills of costs with proof of service of the same upon the opposing attorneys.

37.

In the preparation of briefs any citations made from "Federal Cases" must be accompanied by the citation of the original report of the case, and where a citation is made from the American Bankruptcy Reports, the citation in the Federal Reporter or United States Supreme Court Reports must also be given. If the case is not reported elsewhere than in Federal Cases or American Bankruptcy Reports the fact must be so stated.

38.

Petitions to review orders in bankruptcy filed under the provisions of Section 24B of the Bankruptcy Act, must be filed and served within ten days after the entry of the order sought to be reviewed, and a transcript of the record of the proceedings in the Bankruptcy Court of the matter to be reviewed must be filed and the cause docketed within thirty days thereafter, but the judge of the Bankruptcy Court may for good cause shown enlarge the time for filing the petition or record, the order of enlargement to be made and filed with the clerk of this Court before the expiration of the times hereby limited for filing the petition and record respectively.

RULES IN ADMIRALTY.

UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT.

Adopted July 1, 1892. Amended October 5, 1892.

1.

APPEALS AND NEW PLEADINGS.

An appeal to the Circuit Court of Appeals shall be taken by filing in the office of the clerk of the District Court, and serving on the proctor of the adverse party a notice signed by the appellant or his proctor that the party appeals to the Circuit Court of Appeals from the decree complained of.

The appeal shall be heard on the pleadings and evidence in the District Court, unless the Appellate Court, on motion, otherwise order.

2.

NOTICE AND BOND.

Sec. 1. When a notice of appeal is served, the appellant shall file in the clerk's office of the District Court a bond for costs of the appeal, with sufficient surety, in the sum of \$250, conditioned that the appellant shall prosecute his appeal to effect and pay the costs, if the appeal is not sustained. Such security shall be given within ten days after filing the notice, or the appeal shall be deemed abandoned, and the decree of the court below enforced, unless otherwise ordered by a judge of this court.

Sec. 2. And if the appellant desires to stay the execution of the decree of the court below, the bond which he shall give shall be a bond with sufficient surety in such further sum as the judge of the District Court or a judge of this court shall order, conditioned that he will abide by and perform whatever decree may be rendered by this court in the cause, or on the mandate of this court by the court below.

Sec. 3. The appellant shall, on filing either of such bonds, give notice of such filing, and of the names and residence of the sureties, and if the appellee, within two days, excepts to the sureties, they shall justify, on notice, within two days after such exception.

3.

REVIEW IN PART ONLY.

The appellant may also, at his option, state in his notice of appeal that he desires only to review one or more questions involved in the cause, which questions must be clearly and succinctly stated; and he shall be concluded in this behalf by such notice, and the review upon such an appeal shall be limited to such question or questions.

4.

APOSTLES ON APPEAL TO CONTAIN.

Sec. 1. The apostles, on an appeal to this court, shall, in cases where a general notice of appeal is served, consist of the following:

(1). A caption exhibiting the proper style of the court and the title of the cause, and a statement showing the time of the commencement of the suit; the names of the parties, setting forth the original parties and those who have become parties before the appeal, if any change has taken place; the several dates when the respective pleadings were filed; whether or not the defendant was arrested, or bail taken, or property attached, or arrested, and if so, an account of the proceedings thereunder; the time when the trial was had, and the name of the judge hearing the same; whether or not any question was referred to a commissioner, or commissioners, and if so, the result of the proceedings and report thereon; the date of the entry of the interlocutory and final decrees; and the date when the notice of appeal was filed.

(2). All the pleadings, with the exhibits annexed thereto.

(3). All the testimony and other proofs adduced in the cause.

(4). The interlocutory decree and any order of the court which appellant may desire to have reviewed on the appeal.

(5). Any report of a commissioner or commissioners to which exception may have been taken, with the order or orders of the court respecting the same, and the exceptions to the report, and so much of the testimony taken in the proceeding as may be necessary to a review of the exceptions.

(6). All opinions of the court, whether upon interlocutory questions or finally deciding the cause.

(7). The final decree, and the notice of appeal; and

(8). The assignments of error.

Sec. 2. All other papers shall be omitted unless otherwise ordered by the judge who heard the cause.

Sec. 3. Where the appellant shall appeal specially and seek only to review one or more questions involved in the cause, the apostles may, by stipulation between the proctors for the respective parties, contain only such papers and proceedings and evidence as are necessary to review the questions raised by the appeal.

5.

CERTIFYING RECORDS.

The appellants shall, within thirty days after giving notice of appeal, procure to be filed in this court the apostles certified by the clerk of the

ADMIRALTY RULES OF THE CIRCUIT COURT OF APPEALS. 509

District Court, or in case of a special appeal, the stipulated record, with the certification by the said clerk of all papers contained therein on file in his office.

6.

IF APPEARANCE OF APPELLEE NOT ENTERED.

If the appellee does not cause his appearance to be entered in this court within ten days after service on his proctor of notice that the apostles are filed in this court, the appellant may proceed *ex parte* in the cause, and have such decree as the nature of the case may demand.

7.

NEW ALLEGATIONS, ETC.

Upon sufficient cause shown, this court or any judge thereof, may allow either appellant or appellee to make new allegations or pray different relief, or interpose a new defence, or take new proofs. Application for such leave must be made within fifteen days after the filing of the apostles and upon at least four days notice to the adverse party.

8.

NEW PLEADINGS—NEW TESTIMONY.

If leave be granted to make new allegations, pray different relief or interpose a new defence, the moving party shall, within ten days thereafter, serve such new pleading, duly verified, on the adverse party, who shall, if such pleading be a libel, within twenty days answer on oath.

If leave be given to take new testimony, the same may be taken and filed within thirty days after the entry of the order granting such leave, and the adverse party may take and file counter testimony within twenty days after such filing.

9.

NEW TESTIMONY—HOW TAKEN.

Such testimony shall be taken by deposition before any United States commissioner, or notary public, upon reasonable notice in writing given to the opposite party; or by commission issued out of this court with interrogatories annexed. Upon proper cause shown, the court may grant an open commission.

10.

PRINTING NEW PLEADINGS AND TESTIMONY.

If new pleadings are filed or testimony taken in this court, the same shall also be printed and furnished by the clerk, as in the 23d General Rule provided.

11.

MOTIONS.

All motions shall be made upon at least four days notice.

13.

OBJECTIONS TO EVIDENCE IN THE RECORD.

In all cases of equity or admiralty jurisdiction, heard in this court, no objection shall hereafter be allowed to be taken to the admissibility of any deposition, deed, grant, or other exhibit found in the record as evidence, unless objection was taken thereto in the court below and entered of record; but the same shall otherwise be deemed to have been admitted by consent.

14.

CERTIORARI.

No *certiorari* for diminution of the record will be hereafter awarded in any case, unless a motion therefor shall be made in writing, and the facts on which the same is founded shall, if not admitted by the other party, be verified by affidavit. And all motions for *certiorari* must be made at the first term of the entry of the case; otherwise, the same will not be granted, unless upon special cause shown to the court, accounting satisfactorily for the delay.

15.

DEATH OF A PARTY.

1. Whenever, pending a writ of error or appeal in this court, either party shall die, the proper representatives in the personalty or realty of the deceased party, according to the nature of the case, may voluntarily come in and be admitted parties to the suit, and thereupon the case shall be heard and determined as in other cases; and if such representatives shall not voluntarily become parties, then the other party may suggest the death on the record, and thereupon, on motion, obtain an order that unless such representatives shall become parties within the first ten days of the ensuing term, the party moving for such order, if defendant in error, shall be entitled to have the writ of error or appeal dismissed; and if the party so moving shall be plaintiff in error, he shall be entitled to open the record, and on hearing have the judgment or decree reversed, if it be erroneous: Provided, however, That a copy of every such order shall be printed in some newspaper of general circulation within the state, territory, or district from which the case is brought, for three successive weeks, at least sixty days before the beginning of the term of the Supreme Court then next ensuing.

2. When the death of a party is suggested, and the representatives of the deceased do not appear by the tenth day of the second term next succeeding the suggestion, and no measures are taken by the opposite party within that time to compel their appearance, the case shall abate.

3. When either party to a suit in a Circuit Court of the United States shall desire to prosecute a writ of error or appeal to the Supreme Court of the United States, from any final judgment or decree, rendered in the Circuit Court, and at the time of suing out such writ of error or appeal the other party to the suit shall be dead and have no proper representative

within the jurisdiction of the court which rendered such final judgment or decree, so that the suit can not be revived in that court, but shall have a proper representative in some state or territory of the United States, the party desiring such writ of error or appeal may procure the same, and may have proceedings on such judgment or decree superseded or stayed in the same manner as is now allowed by law in other cases, and shall thereupon proceed with such writ of error or appeal as in other cases. And within thirty days after the commencement of the term to which such writ of error or appeal is returnable, the plaintiff in error or appellant shall make a suggestion to the court, supported by affidavit, that the said party was dead when the writ of error or appeal was taken or sued out, and had no proper representative within the jurisdiction of the court which rendered said judgment or decree, so that the suit could not be revived in that court, and that said party had a proper representative in some state or territory of the United States, and stating therein the name and character of such representative, and the state or territory in which such representative resides; and, upon such suggestion, he may, on motion, obtain an order that, unless such representative shall make himself a party within the first ten days of the ensuing term of the court, the plaintiff in error or appellant shall be entitled to open the record, and, on hearing, have the judgment or decree reversed, if the same be erroneous: Provided, however, That a proper citation reciting the substance of such order shall be served upon such representative, either personally or by being left at his residence, at least sixty days before the beginning of the term of the Supreme Court then next ensuing: And provided, also, That in every such case if the representative of the deceased party does not appear by the tenth day of the term next succeeding said suggestion, and the measures above provided to compel the appearance of such representative have not been taken within the time as above required, by the opposite party, the case shall abate: And provided, also, That the said representative may at any time before or after said suggestion come in and be made a party to the suit, and thereupon the case shall proceed, and be heard and determined as in other cases.

16.

NO APPEARANCE OF PLAINTIFF.

Where no counsel appears and no brief has been filed for the plaintiff in error or appellant, when the case is called for trial, the defendant may have the plaintiff called and the writ of error or appeal dismissed, or may open the record and pray for an affirmance.

17.

NO APPEARANCE OF DEFENDANT.

Where the defendant fails to appear when the case is called for trial, the court may proceed to hear an argument on the part of the plaintiff and to give judgment according to the rights of the case.

18.

NO APPEARANCE OF EITHER PARTY.

When a case is reached in the regular call of the docket, and there is no appearance for either party, the case shall be dismissed at the cost of the plaintiff.

19.

NEITHER PARTY READY AT SECOND TERM.

When a case is called for argument at two successive terms, and upon the call at the second term neither party is prepared to argue it, it shall be dismissed at the cost of the plaintiff, unless sufficient cause is shown for further postponement.

20.

PRINTED ARGUMENTS.

1. In all cases brought here on writ of error, appeal, or otherwise, the court will receive printed arguments without regard to the number of the case on the docket, if the counsel on both sides shall choose to submit the same within the first ninety days of the term; and, in addition, appeals from the Court of Claims may be submitted by both parties within thirty days after they are docketed, but not after the first of April; but twenty-five copies of the arguments, signed by attorneys or counsellors of this court, must be first filed.

2. When a case is reached in the regular call of the docket, and a printed argument shall be filed for one or both parties, the case shall stand on the same footing as if there were an appearance by counsel.

3. When a case is taken up for trial upon the regular call of the docket, and argued orally in behalf of only one of the parties, no printed argument for the opposite party will be received, unless it is filed before the oral argument begins, and the court will proceed to consider and decide the case upon the *ex parte* argument.

4. No brief or argument will be received, either through the clerk or otherwise, after a case has been argued or submitted, except upon leave granted in open court after notice to opposing counsel.

21.

BRIEFS.

1. The counsel for plaintiff in error or appellant shall file with the clerk of the court, at least six days before the case is called for argument, twenty-five copies of a printed brief, one of which shall, on application, be furnished to each of the counsel engaged upon the opposite side.

2. This brief shall contain, in the order here stated—

(1) A concise abstract, or statement of the case, presenting succinctly the questions involved and the manner in which they are raised.

(2) A specification of the errors relied upon, which, in cases brought up by writ of error, shall set out separately and particularly each error

asserted and intended to be urged; and in cases brought up by appeal the specification shall state, as particularly as may be, in what the decree is alleged to be erroneous. When the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the specification shall set out the part referred to *totidem verbis*, whether it be instructions given or instructions refused. When the error alleged is to a ruling upon the report of a master, the specification shall state the exception to the report and the action of the court upon it.

(3) A brief of the argument, exhibiting a clear statement of the points of law or fact to be discussed, with a reference to the pages of the record and the authorities relied upon in support of each point. When a statute of a state is cited, so much thereof as may be deemed necessary to the decision of the case shall be printed at length.

3. The counsel for a defendant in error or an appellee shall file with the clerk twenty-five printed copies of his argument, at least three days before the case is called for hearing. His brief shall be of like character with that required of the plaintiff in error or appellant, except that no specification of errors shall be required, and no statement of the case, unless that presented by the plaintiff in error or appellant is controverted.

4. When there is no assignment of errors, as required by section 997 of the Revised Statutes, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded; but the court, at its option, may notice a plain error not assigned or specified.

5. When, according to this rule, a plaintiff in error or an appellant is in default, the case may be dismissed on motion; and when a defendant in error or an appellee is in default, he will not be heard, except on consent of his adversary, and by request of the court.

6. Where no oral argument is made for one of the parties, only one counsel will be heard for the adverse party.

22.

ORAL ARGUMENTS.

1. The plaintiff or appellant in this court shall be entitled to open and conclude the argument of the case. But when there are cross-appeals they shall be argued together as one case, and the plaintiff in the court below shall be entitled to open and conclude the argument.

2. Only two counsel will be heard for each party on the argument of a case.

3. Two hours on each side will be allowed for the argument, and no more, without special leave of the court, granted before the argument begins. The time thus allowed may be apportioned between the counsel on the same side, at their discretion: Provided, always, That a fair opening of the case shall be made by the party having the opening and closing arguments.

23.

INTEREST.

1. In cases where a writ of error is prosecuted to this court, and the judgment of the inferior court is affirmed, the interest shall be calculated and levied, from the date of the judgment below until the same is paid, at the same rate that similar judgments bear interest in the courts of the state where such judgment is rendered.

2. In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding 10 per cent, in addition to interest, shall be awarded upon the amount of the judgment.

3. The same rule shall be applied to decrees for the payment of money in cases in equity, unless otherwise ordered by this court.

4. In cases in admiralty, damages and interest may be allowed if specially directed by the court.

24.

COSTS.

1. In all cases where any suit shall be dismissed in this court, except where the dismissal shall be for want of jurisdiction, costs shall be allowed to the defendant in error or appellee, unless otherwise agreed by the parties.

2. In all cases of affirmance of any judgment or decree in this court, costs shall be allowed to the defendant in error or appellee, unless otherwise ordered by the court.

3. In cases of reversal of any judgment or decree in this court, costs shall be allowed to the plaintiff in error or appellant, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case.

4. Neither of the foregoing sections shall apply to cases where the United States are a party; but in such cases no costs shall be allowed in this court for or against the United States.

5. In all cases of the dismissal of any suit in this court, it shall be the duty of the clerk to issue a mandate, or other proper process, in the nature of a *procedendo*, to the court below, for the purpose of informing such court of the proceeding in this court, so that further proceedings may be had in such court as to law and justice may appertain.

6. When costs are allowed in this court, it shall be the duty of the clerk to insert the amount thereof in the body of the mandate, or other proper process, sent to the court below, and annex to the same the bill of items taxed in detail.

7. In pursuance of the Act of March 3, 1883, authorizing and empowering this court to prepare a table of fees to be charged by the clerk of this court, the following table is adopted:

For docketing a case and filing and indorsing the transcript of the record, five dollars.

For entering an appearance, twenty-five cents.

For entering a continuance, twenty-five cents.

For filing a motion, order, or other paper, twenty-five cents.

For entering any rule, or for making or copying any record or other paper, twenty cents per folio of each one hundred words.

For transferring each case to a subsequent docket and indexing the same, one dollar.

For entering a judgment or decree, one dollar.

For every search of the records of the court, one dollar.

For a certificate and seal, two dollars.

For receiving, keeping, and paying money in pursuance of any statute or order of court, two per cent on the amount so received, kept and paid.

For an admission to the bar and certificate under seal, ten dollars.

For preparing the record or a transcript thereof for the printer, indexing the same, supervising the printing and distributing the printed copies to the justices, the reporter, the law library, and the parties or their counsel, fifteen cents per folio.

For making a manuscript copy of the record, when required under Rule 10, twenty cents per folio, but nothing in addition for supervising the printing.

For issuing a writ of error and accompanying papers, five dollars.

For mandate or other process, five dollars.

For filing briefs, five dollars for each party appearing.

For every copy of any opinion of the court or any justice thereof, certified under seal, one dollar for every printed page, but not to exceed five dollars in the whole for any copy.

25.

OPINIONS OF THE COURT.

1. All opinions delivered by the court shall, immediately upon the delivery thereof, be handed to the clerk to be recorded. And it shall be the duty of the clerk to cause the same to be forthwith recorded, and to deliver a copy to the reporter as soon as the same shall be recorded.

2. The original opinions of the court shall be filed with the clerk of this court for preservation.

3. Opinions printed under the supervision of the justices delivering the same need not be copied by the clerk into a book of records; but at the end of each term the clerk shall cause such printed opinions to be bound in a substantial manner into one or more volumes, and when so bound they shall be deemed to have been recorded within the meaning of this rule.

26.

CALL AND ORDER OF THE DOCKET.

1. The court, on the second day in each term, will commence calling the cases for argument in the order in which they stand on the docket, and

proceed from day to day during the term in the same order (except as hereinafter provided); and if the parties, or either of them, shall be ready when the case is called, the same will be heard; and if neither party shall be ready to proceed in the argument, the case shall go down to the foot of the docket, unless some good and satisfactory reason to the contrary shall be shown to the court

2. Ten cases only shall be considered as liable to be called on each day during the term. But on the coming in of the court on each day the entire number of such ten cases will be called, with a view to the disposition of such of them as are not to be argued.

3. Criminal cases may be advanced by leave of the court on motion of either party.

4. Cases once adjudicated by this court upon the merits, and again brought up by writ of error or appeal, may be advanced by leave of the court on motion of either party.

5. Revenue and other cases in which the United States are concerned, which also involve or affect some matter of general public interest, may also by leave of the court be advanced on motion of the Attorney-General.

6. All motions to advance cases must be printed, and must contain a brief statement of the matter involved, with the reasons for the application.

7. No other case will be taken up out of the order on the docket, or be set down for any particular day, except under special and peculiar circumstances to be shown to the court. Every case which shall have been called in its order and passed and put at the foot of the docket shall, if not again reached during the term it was called, be continued to the next term of the court.

8. Two or more cases, involving the same question, may, by the leave of the court, be heard together, but they must be argued as one case.

9. If, after a case has been passed under circumstances which do not place it at the foot of the docket, the parties shall desire to have it heard, they may file with the clerk their joint request to that effect, and the case shall then be by him reinstated for call ten cases after that under argument, or next to be called at the end of the day the request is filed. If the parties will not unite in such a request, either may move to take up the case, and it shall then be assigned to such place upon the docket as the court may direct.

10. No stipulation to pass a case without placing it at the foot of the docket will be recognized as binding upon the court. A case can only be so passed upon application made and leave granted in open court.

27.

ADJOURNMENT.

The court will, at every term, announce on what day it will adjourn at least ten days before the time which shall be fixed upon, and the court will take up no case for argument, nor receive any case upon printed briefs, within three days next before the day fixed upon for adjournment.

28.

DISMISSING CASES IN VACATION.

Whenever the plaintiff and defendant in a writ of error pending in this court, or the appellant and appellee in an appeal, shall in vacation, by their attorneys of record, sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

29.

SUPERSEDEAS.

Supersedeas bonds in the Circuit Courts must be taken, with good and sufficient security, that the plaintiff in error or appellant shall prosecute his writ or appeal to effect, and answer all damages and costs if he fail to make his plea good. Such indemnity, where the judgment or decree is for the recovery of money not otherwise secured, must be for the whole amount of the judgment or decree, including just damages for delay, and costs and interest on the appeal; but in all suits where the property in controversy necessarily follows the event of the suit, as in real actions, replevin, and in suits on mortgages, or where the property is in the custody of the marshal under admiralty process, as in case of capture or seizure, or where the proceeds thereof, or a bond for the value thereof, is in the custody or control of the court, indemnity in all such cases is only required in an amount sufficient to secure the sum recovered for the use and detention of the property, and the costs of the suit, and just damages for delay, and costs and interest on the appeal.

30.

REHEARING.

A petition for rehearing after judgment can be presented only at the term at which judgment is entered, unless by special leave granted during the term; and must be printed and briefly and distinctly state its grounds, and be supported by certificate of counsel; and will not be granted, or permitted to be argued, unless a justice who concurred in the judgment desires it, and a majority of the court so determines.

31.

FORM OF PRINTED RECORDS AND BRIEFS.

All records, arguments, and briefs printed for the use of the court must be in such form and size that they can be conveniently bound together, so as to make an ordinary octavo volume, and, as well as all quotations contained therein, and the covers thereof, must be printed in clear type (not smaller than small pica) and on unglazed paper.

32.

WRITS OF ERROR AND APPEALS UNDER THE ACT OF FEBRUARY 25, 1889,
CHAPTER 236, OR UNDER SECTION 5 OF THE ACT OF MARCH 3, 1891,
CHAPTER 517.

Cases brought to this court by writ of error or appeal under the Act of February 25, 1889, chapter 236, or under section 5 of the Act of March 3, 1891, chapter 517, where the only question in issue is the question of the jurisdiction of the court below, will be advanced on motion and heard under the rules prescribed by Rule 6 in regard to motions to dismiss writs of error and appeals.

33.

MODELS, DIAGRAMS, AND EXHIBITS OF MATERIAL.

1. Models, diagrams, and exhibits of material forming part of the evidence taken in the court below, in any case pending in this court, on writ of error or appeal, shall be placed in the custody of the marshal of this court at least one month before the case is heard or submitted.

2. All models, diagrams, and exhibits of material, placed in the custody of the marshal for the inspection of the court on the hearing of a case, must be taken away by the parties within one month after the case is decided. When this is not done, it shall be the duty of the marshal to notify the counsel in the case, by mail or otherwise, of the requirements of this rule; and if the articles are not removed within a reasonable time after the notice is given, he shall destroy them, or make such other disposition of them as to him may seem best.

34.

CUSTODY OF PRISONERS ON HABEAS CORPUS.

1. Pending an appeal from the final decision of any court or judge declining to grant the writ of habeas corpus, the custody of the prisoner shall not be disturbed.

2. Pending an appeal from the final decision of any court or judge discharging the writ after it has been issued, the prisoner shall be remanded to the custody from which he was taken by the writ, or shall, for good cause shown, be detained in custody of the court or judge, or be enlarged upon recognizance as hereinafter provided.

3. Pending an appeal from the final decision of any court or judge discharging the prisoner, he shall be enlarged upon recognizance, with surety, for appearance to answer the judgment of the Appellate Court, except where, for special reasons, sureties ought not to be required.

35.

ASSIGNMENT OF ERRORS.

1. Where an appeal or a writ of error is taken from a District Court or a Circuit Court direct to this court, under section 5 of the act entitled "An act to establish Circuit Courts of Appeals and to define and regulate

in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, the plaintiff in error or appellant shall file with the clerk of the court below, with his petition for the writ of error or appeal, an assignment of errors, which shall set out separately and particularly each error asserted and intended to be urged. No writ of error or appeal shall be allowed until such assignment of errors shall have been filed. When the error alleged is to the admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected. When the error alleged is to the charge of the court, the assignment of errors shall set out the part referred to *totidem verbis*, whether it be in instructions given or in instructions refused. Such assignment of errors shall form part of the transcript of the record, and be printed with it. When this is not done counsel will not be heard, except at the request of the court; and errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned.

2. The plaintiff in error or appellant shall cause the record to be printed, according to the provisions of sections 2, 3, 4, 5, 6 and 9, of Rule 10.

36.

APPEALS AND WRITS OF ERROR.

1. An appeal or a writ of error from a Circuit Court or a District Court, direct to this court, in the cases provided for in sections 5 and 6 of the act entitled "An act to establish Circuit Courts of Appeals, and to define and regulate in certain cases the jurisdiction of the courts of the United States, and for other purposes," approved March 3, 1891, may be allowed, in term time or in vacation, by any justice of this court or by any circuit judge within his circuit, or by any district judge within his district, and the proper security be taken and the citation signed by him, and he may also grant a supersedeas and stay of execution or of proceedings, pending such writ of error or appeal.

2. Where such writ of error is allowed in the case of a conviction of an infamous crime, or in any other criminal case in which it will lie under said sections 5 and 6, the Circuit Court or District Court, or any justice or judge thereof, shall have power, after the citation is served, to admit the accused to bail in such amount as may be fixed.

37.

CASES FROM CIRCUIT COURT OF APPEALS.

1. Where, under section 6 of the said act, a Circuit Court of Appeals shall certify to this court a question or proposition of law, concerning which it desires the instruction of this court for its proper decision, the certificate shall contain a proper statement of the facts on which such question or proposition of law arises.

2. If application is thereupon made to this court that the whole record and cause may be sent up to it for its consideration, the party making

such application shall, as a part thereof, furnish this court with a certified copy of the whole of said record.

3. Where application is made to this court under section 6 of the said act to require a case to be certified to it for its review and determination, a certified copy of the entire record of the case in the Circuit Court of Appeals shall be furnished to this court by the applicant, as part of the application.

38.

INTEREST, COSTS, AND FEES.

The provisions of Rules 23 and 24 of this court, in regard to interest and costs and fees, shall apply to writs of error and appeals and reviews under the provisions of sections 5 and 6 of the said act.

39.

MANDATES.

Mandates shall issue as of course after the expiration of thirty days from the day the judgment or decree is entered, unless the time is enlarged by order of the court, or of a justice thereof when the court is not in session, but during the term.

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PRIZE RULES.

OF THE

SOUTHERN DISTRICT OF NEW YORK.

1.

There shall be issued, under the seal and authority of this court, commissions to such persons as the court shall think fit, appointing them severally commissioners to take examinations of witnesses in prize causes *in preparatorio* on the standing interrogatories, which have been settled and adopted by this court, and all other depositions which they are empowered to require, and to discharge such other duties in relation to ships or vessels, or property brought into this district as prize, as shall be designated by the said commissioners and the rules and orders of this court.

2.

The captors of any property brought into this district as prize, or some one on their behalf, shall without delay give notice to the district judge, or to one of the commissioners aforesaid, of the arrival of the property, and of the place where the same may be found.

3.

Upon the receipt of notice thereof from the captors or district judge, a commissioner shall repair to the place where the said prize property then is; and if the same be a ship or vessel, or if the property be on board a ship or vessel, he shall cause the said ship or vessel to be safely moored in sufficient depth of water, or in soft ground.

4.

The commissioner shall, in case the prize be a ship or vessel, examine whether bulk has been broken; and if it be found that bulk has been broken, one of the said commissioners shall take information upon what occasion or for what cause the same was done. If the property captured be not a ship or vessel, or in a ship or vessel, he shall examine the chests, packages, boxes or casks containing the subject captured, and shall ascertain whether the same had been opened, and shall in every case examine whether any of the property originally captured has been secreted or taken away subsequently to the capture.

5.

The commissioner in no case shall leave the captured property until he secure the same by seals upon the hatches, doors, chests, bales,

boxes, casks, or packages, as the case may require, so that they cannot be opened without breaking the said seals; and the said seals shall not be broken, or the property removed, without the special order of the court, excepting in case of fire and tempest, or of absolute necessity.

6.

If the captured property be not a vessel, or on board a vessel, the commissioner shall take a detailed account of the particulars thereof, and shall cause the same to be deposited under the seals as aforesaid, in a place of safety, there to abide the order or decree of this court.

7.

If no notification shall, within reasonable time, be given by the captors, or by any person in their behalf, of any property which may be brought as prize within this district, and the commissioners, or either of them, shall become informed thereof, by any means, it shall be the duty of the said commissioners, or one of them, to repair to the place where such property is, and to proceed in respect to the same, as if notice had been given by the captors.

8.

The captor shall deliver to the judge at the time of such notice, or to the commissioner or commissioners, when he or they shall, conformably to the foregoing rule, repair to the place where such captured property is, or at such other time as the said commissioners, or either of them, shall require the same, all such papers, passes, sea-briefs, charters, bills of lading, cockets, letters and other documents and writings as shall have been found on board the captured ship, or which have any reference to, or connection with the captured property, and which are in the possession, custody, or power of the captors.

9.

The said papers, documents and writings, shall be regularly marked and numbered by a commissioner, and the captor, chief officer, or some other person who was present at the taking of the prize, and saw that such documents, papers, and writings were found with the prize, must make a deposition before one of the said commissioners that they have delivered up the same to the judge or commissioner as they were found or received, without any fraud, subduction or embezzlement. If any documents, papers, or writings, relative to or connected with the captured property are missing or wanting, the deponent shall, in his said deposition, account for the same according to the best of his knowledge, information, and belief.

10.

The deponent must further swear, that if at any time thereafter, and before the final condemnation or acquittal of the said property, any further or other papers relating to the said captured property shall be

found or discovered, to the knowledge of the deponent, they shall also be delivered up, or information thereof given to the commissioners, or to this court, which deposition shall be reduced to writing by the commissioner, and shall be transmitted to the clerk of the court, as hereinafter mentioned.

11.

When the said documents, papers and writings are delivered to a commissioner, he shall retain the same till after the examination *in preparatorio* shall have been made by him, as is hereafter provided, and then he shall transmit the same, with the same affidavit in relation thereto, the preparatory examinations, and the information he may have received in regard to the said captured property, under cover, and under his seal, to this court, addressed to the clerk thereof, and expressing on the said cover to what captured property the documents relate, or who claim to be the captors thereof, or from whom he received the information of the capture, which said cover shall not be opened without the order of the court.

12.

Within three days after the captured property shall have been brought within the jurisdiction of this court, the captor shall produce to one of the commissioners, three or four, if so many there be of the company or persons who were captured with, or who claim the said captured property, and in case the capture be a vessel, the master and mate or supercargo, if brought in, must always be two, in order that they may be examined by the commissioner *in preparatorio* upon the standing interrogatories.

13.

In the examination of witnesses *in preparatorio*, the commissioner shall use no other interrogatories but the standing interrogatories, unless special interrogatories are directed by the court. He shall write down the answer of every witness separately to each interrogatory, and not to several interrogatories together; and the parties may personally, or by their agents, attend the examination of witnesses before the commissioners; but they shall have no right to interfere with the examination by putting questions, or objecting to questions, nor to take notes of the proceedings before the commissioner, to be used otherwise than before the court. All objections to the regularity or legality of the proceedings of the commissioners must be made to the court.

14.

When a witness declares he cannot answer to any interrogatory, the commissioner shall admonish the witness, that by virtue of his oath taken to speak the truth, and nothing but the truth, he must answer to the best of his knowledge, or when he does not know absolutely, then to answer to the best of his belief concerning any one fact.

15.

The witnesses are to be examined separately, and not in presence of each other, and they may be kept from all communication with the parties, their agents or counsel, during the examination. The commissioners will see that every question is understood by the witnesses, and will take their exact, clear and explicit answers thereto: and if any witness refuses to answer at all, or to answer fully, the examining commissioner is forthwith to certify the facts to the court.

16.

The captors must produce all their witnesses in succession, and cannot, after the commissioners have transmitted the examination of a part of the crew to the judge, be allowed to have others examined without the special order of the court: and the examination of every witness shall be begun, continued and finished in the same day, and not at different times. Copies of the standing interrogatories shall not be returned by the commissioner with the examinations, but it shall be sufficient for the answer of the witnesses to refer to the standing interrogatories by corresponding numbers.

17.

Before any witness shall be examined on the standing interrogatories the commissioner shall administer to him an oath in the following form: "You shall true answer make to all such questions as shall be asked of you on these interrogatories, and therein you shall speak the whole truth and nothing but the truth, so help you God." If the witness is conscientiously averse to swearing, an affirmation to the same effect shall be administered to him.

18.

Whenever the ship's company, or any part thereof, of a captured vessel, are foreigners, or speak only a foreign language, the commissioner taking the examination may summon before him competent interpreters, and put to them an oath well and truly to interpret to the witness the oath administered to him, and the interrogations propounded, and well and truly to interpret to the commissioners the answers given by the witness to the respective interrogatories.

19.

The examination of each witness on the standing interrogatories shall be returned according to the following form:

"Deposition of A. B., a witness produced, sworn, and examined in *preparatorio*, on the day of in the year at the of on the standing interrogatories established by the District Court of the United States for the Southern District of New York. The said witness having been produced for the purpose of such examination by C. D., in behalf of the captors of a certain ship or vessel called the (or of certain goods, wares and merchandise, as the case may be.)

"1st. To the first interrogatory, the deponent answers that he was born at etc.

"2d. To the second interrogatory the deponent answers that he was present at the time of the taking," etc.

20.

When the interrogatories have all been answered by a witness, he shall sign his deposition, and the commissioner shall put a certificate thereto in the usual form, and subscribe his name to the same.

21.

No person having or claiming any interest in the captured property, or having any interest in any ship having letters of marque or commissions of war, shall act as a commissioner. Nor shall a commissioner act either as proctor, advocate or counsel, either for captors or claimants in any prize cause whatever.

22.

If the captain or prize-master neglect or refuse to give up and deliver to the commissioners the documents, papers, and writings relating to the captured property, according to these rules; or refuse or neglect to produce, or cause to be produced, witnesses to be examined *in preparatorio*, within three days after the arrival of the captured property within the jurisdiction of this court, or shall otherwise unnecessarily delay the production of the said documents, papers, or writings, the commissioners, or one of them nearest to the place where the captured property may be, or before whom the examination *in preparatorio* may have been already begun, shall give notice in writing to the delinquent to forthwith produce the said documents, papers, and writings, and to bring forward his witnesses, and if he shall neglect or delay so to do for the period of twenty-four hours thereafter, such commissioner shall certify the same to this court, that such proceedings may thereupon be had as justice may require.

23.

If within twenty-four hours after the arrival within this district, of any captured vessel, or of any property taken as prize, the captors or their agent shall not give notice to the judge or a commissioner, pursuant to the provisions herein made, or shall not, two days after such notice given, produce witnesses to be examined *in preparatorio*, then any person claiming the captured property and restoration thereof, may give notice to the judge or the commissioners as aforesaid, of the arrival of the said captured property, and thereupon such proceedings may be had by the commissioners in respect to the said property, and relative to the documents, papers, and writings connected with the said capture, which the claimant may have in his possession, custody or power, and relative to the examination of witnesses *in preparatorio*, as near as may be, as is before provided for in

cases where the captors shall give notice and examine *in preparatorio*. And the said claimant may, in such cases, file his libel for restitution, and proceed thereon according to the rules and practice of this court.

24.

As soon as may be convenient after the captured property shall have been brought within the jurisdiction of this court, a libel may be filed, and a monition shall thereupon be issued, and such proceedings shall be had as are usual in conformity to the practice of this court in cases of vessels, goods, wares, and merchandise seized as forfeited in virtue of any revenue law of the United States.

25.

In all cases by consent of captor and claimant, or upon attestation exhibited upon the part of the claimant only, without consent of the captor, that the cargo or part thereof is perishing or perishable, the claimant specifying the quantity and quality of the cargo, may have the same delivered to him on giving bail to answer the value thereof if condemned, and further to abide the event of the suit, such bail to be approved of by the captor, or otherwise the persons who give security swearing themselves to be severally and truly worth the sum for which they give security. If the parties cannot agree upon the value of the cargo, a decree or commission of appraisement may issue from the court to ascertain the value.

26.

In cases where there is no claim, an affidavit being exhibited on the part of the captor of such perishing or perishable cargo, specifying the quantity and quality thereof, the captor may have a decree or commission of appraisement and sale of such cargo, the proceeds thereof to be brought into court, to abide the further orders of the court.

27.

The name of each cause shall be entered by the clerk upon the docket for hearing in their order, according to the dates of the returns of the monitions, and lists of the causes ready for hearing are to be constantly hung up in the clerk's office for public inspection.

28.

In all cases where a decree or commission of appraisement and sale of any ship and cargo, or either of them, shall have issued, no question respecting the adjudication of such ship and goods, or either of them, as to freight or expenses, shall be heard till the said decree or commission shall be returned, with the account of sales, and the proceeds according to such account of sales be paid into court, to abide the order of the court in respect thereto.

29.

After the examinations taken *in preparatorio* on the standing interrogatories are brought into the clerk's office, and the monition has issued, no further or other examinations upon the said interrogatories shall be taken, or affidavits received, without the special directions of the judge upon due notice given.

30.

None but the captors can, in the first instance, invoke papers from one captured vessel to another, nor can it be done without the special mandate of the judge; and in case of its allowance, only extracts from the papers are to be used.

31.

The invocation shall only be allowed on affidavit on the part of the captors, satisfying the court that such papers are material and necessary.

32.

Application for permission to invoke must be on service, at least two days previously, of notice thereof, and copy of the affidavit on the claimants or their agent (if known to be in this port), and after invocation allowed to the captors, the claimants, by permission of the judge, for sufficient cause shown, may use other extracts of the same papers in explanation of the parts invoked.

33.

But when the same claimants intervene for different vessels or for goods, wares, or merchandise, captured on board different vessels, and proofs are taken in the respective causes, and the causes are on the dockets for trial at the same time, the captors may, on the hearing in court, invoke of course in either of such causes the proofs taken in any other of them; the claimants, after such invocation, having liberty to avail themselves also of the proofs in the cause invoked.

34.

In all motions for commissions and decrees of appraisement and sale, the time shall be specified within which it is prayed that the commissions or decrees shall be made returnable.

35.

The commissioners shall make regular returns on the days in which their commissions or decrees are returnable, stating the progress that has been made in the execution of the commissions or decrees, and if necessary, praying an enlargement of the time for the completion of the business.

36.

The commissioners shall bring in the proceeds which have been collected at the time of their returns; and they may be required from time to time to make partial returns of such sums only as are necessary to cover expenses.

37.

On the returns of commissions or decrees, the commissioners or the marshal must bring in all the vouchers within their control.

38.

All moneys brought into court in prize causes, shall be forthwith paid into such bank in the city of New York, as shall be appointed for keeping the moneys of the court and shall only be drawn out on the specific orders of the court in favor of the persons respectively having right thereto, or their agents or representatives duly authorized to receive the same.

39.

At every stated term of the court, the clerk shall exhibit to the court a statement of all the moneys paid into court in prize cases, designating the amount paid in each particular case and at what time.

40.

The statement, when approved by the court, shall be filed of record in the clerk's office, and be open to the inspection of all parties interested, and certified copies thereof shall be furnished by the clerk, on request, to any party in interest, his proctor or advocate.

41.

When property seized as prize of war is delivered upon bail, a stipulation according to the course of the admiralty is to be taken for double its value.

42.

Every claim interposed must be by the parties in interest, if within convenient distance; or in their absence, by their agent or the principal officer of the captured ship, and must be accompanied by a test affidavit, stating Briefly the facts respecting the claim and its verity, and how the deponent stands connected with or acquired knowledge of it. The same party who may intervene is also competent to attest to the affidavit.

43.

The captors of property brought in or held as prize, or which may have been carried into a foreign port, and there delivered upon bail by the captors shall forthwith libel the same in fact, and sue out the proper process. The first process may, at the election of the party, be a warrant for the

arrest of the property or person to compel a stipulation to abide the decree of the court or a monition.

44.

The monitions shall be made returnable in ten days, and if the property seized as prize is in port, shall be served in the same way as in the case of monitions issued on the instance side of the Court of Admiralty, on seizures for forfeiture under the revenue laws. In case the property claimed as prize is not in port, then the monition is to be served on the parties in interest, their agent or proctor if known to reside in the district, otherwise by publication daily in one of the newspapers of this city for ten successive days preceding the return thereof.

45.

Whenever the jurisdiction of the court is invoked upon matters as incident to prize, except as to the distribution of prize money, there must be distinct articles or allegations in that behalf in the original libel or claim on the part of the party seeking relief. But in case the matters have arisen, or become known to the party subsequent to presenting his libel or claim, the court will allow him to file the necessary amendments.

46.

No permission will be granted to either party to introduce further proofs until after the hearing of the cause upon the proofs originally taken.

47.

In case of captures by the public armed vessels of the United States, and a proceeding for condemnation against the property seized as prize *jure belli*, or in the nature of prize of war, under any act of Congress, the name of the officer under whose authority the capture was made must be inserted in the libel.

48.

A decree of contumacy may be had against any party not obeying the orders or process of the court, duly served upon him; and thereupon an attachment may be sued out against him. But no constructive service of a decree or process, *vis et modis*, or *publica citatio* will be sufficient, unless there has been a publication thereof in a daily paper in this city, at least ten days immediately preceding the motion for an attachment.

49.

When damages are awarded by the court, the party entitled thereto may move for the appointment of three commissioners to assess the same; two persons approved by the court will thereupon be associated with a standing commissioner of the Circuit Court, the clerk or deputy clerk of this court, if not interested in the matter, whose duty it shall be to estimate and compute the damages, in conformity to the principles of

the decree, and return a specific report to the court of the amount of damages, and the particular items of which they are composed.

50.

Any party aggrieved may have such assessment of damages reviewed in a summary manner by the court before final decree rendered thereon, on giving two days' previous notice to the proctor of the party in whose favor the assessment is made of the exceptions he intends taking, and causing to be brought before the court the evidence given the commissioners in relation to the particular excepted to.

51.

Every appeal from the decrees of this court must be made within ten days from the time the decree appealed from is entered, otherwise the party entitled to the decree may proceed to have it executed. No appeal shall stay the execution of a decree unless the party, at the time of entering the appeal, gives a stipulation with two sureties to be approved by the clerk in the sum of two hundred and fifty dollars, to pay all costs and damages that may be awarded against him, and to prosecute the appeal to effect.

52.

If the party appealing is afterwards guilty of unreasonable delay in having the necessary transcripts and proceedings prepared for removing the cause, it will be competent to the other party to move the court for leave to execute the decree notwithstanding the appeal.

53.

In all cases of process *in rem* the property after arrest is deemed in the custody of the court, and the marshal cannot surrender it on bail, or otherwise, without the special order of the court.

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COSTS AND FEES.

Sections of the United States Statutes Relating to Costs and Fees in Admiralty.

REV. STAT. SEC. 823. The following and no other compensation, shall be taxed and allowed to attorneys, solicitors and proctors in the courts of the United States, to district attorneys, clerks of the Circuit and District Courts, marshals, commissioners, witnesses, jurors and printers in the several states and territories, except in cases otherwise expressly provided by law. But nothing herein shall be construed to prohibit attorneys, solicitors and proctors from charging to and receiving from their clients, other than the Government, such reasonable compensation for their services, in addition to the taxable costs, as may be in accordance with general usage in their respective states, or may be agreed upon between the parties.

FEES OF ATTORNEYS, SOLICITORS AND PROCTORS.

REV. STAT. SEC. 824. On a trial before a jury, in civil or criminal causes or before referees, or on a final hearing in equity or admiralty, a docket fee of twenty dollars: *Provided*, That in cases of admiralty and maritime jurisdiction where the libellant recovers less than fifty dollars, the docket fee of his proctor shall be but ten dollars.

For each deposition taken and admitted in evidence in a cause, two dollars and fifty cents.

For services rendered in cases removed from a District to a Circuit Court by writ of error or appeal, five dollars.

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CLERK'S FEES.

REV. STAT. SEC. 828. For issuing and entering every process, commission, summons, capias, execution, warrant, attachment, or other writ, except a writ of venire, or a summons or subpoena for a witness, one dollar.

For issuing a writ of summons or subpoena, twenty-five cents.

For filing and entering every declaration, plea, or other paper, ten cents.

For administering an oath or affirmation, except to a juror, ten cents.

For taking an acknowledgment, twenty-five cents.

For taking and certifying depositions to file, twenty cents for each folio of one hundred words.

For a copy of such deposition furnished to a party on request, ten cents a folio.

For entering any return, rule, order, continuance, judgment, decree, or recognizance, or drawing any bond, or making any record, certificate, return or report, for each folio, fifteen cents.

For a copy of any entry or record, or of any paper on file, for each folio, ten cents.

For making dockets and indexes, issuing venire, taxing costs, and all other services, on the trial or argument of a cause where issue is joined and testimony given, three dollars.

For making dockets and indexes, taxing costs, and all other services, in a cause where issue is joined, but no testimony is given, two dollars.

For making dockets and indexes, taxing costs, and other services, in a cause which is dismissed or discontinued, or where judgment or decree is made or rendered without issue, one dollar.

For making dockets and taxing costs, in cases removed by writ of error or appeal, one dollar.

For affixing the seal of the court to any instrument, when required, twenty cents.

For receiving, keeping and paying out money, in pursuance of any statute or order of court, one per centum on the amount so received, kept and paid.

For traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session.

All books in the offices of the clerks of the Circuit and District Courts, containing the docket or minute of the judgments, or decrees thereof, shall during office hours, be open to the inspection of any person desiring to examine the same, without any fees or charge therefor.

MARSHALS' FEES.

REV. STAT. SEC. 829. For service of any warrant, attachment, summons, capias, or other writ, except execution, venire, or a summons or a subpoena for a witness, two dollars for each person on whom service is made.

For the keeping of personal property attached on mesne process, such compensation as the court, on petition setting forth the facts under oath, may allow.

* * * * *

For serving a writ of subpoena on a witness, fifty cents; and no further compensation shall be allowed for any copy, summons, or notice for a witness.

For serving a writ of possession, partition, execution, or any final process, the same mileage as is allowed for the service of any other writ, and for making the service, seizing or levying on property, advertising and disposing of the same by sale, set-off, or otherwise according to law, receiving and paying over the money, the same fees and poundage as are or shall be allowed for similar services to the sheriffs of the states respectively, in which the service is rendered.

For each bail-bond, fifty cents.

For summoning appraisers, fifty cents each.

* * * * *

For copies of writs or papers furnished at the request of any party, ten cents a folio.

For every proclamation in admiralty, thirty cents.

For serving an attachment *in rem* or a libel in admiralty, two dollars.

For the necessary expenses of keeping boats, vessels, or other property attached or libelled in admiralty, not exceeding two dollars and fifty cents a day.

When a debt or claim in admiralty is settled by the parties without a sale of the property, the marshal shall be entitled to a commission of one per centum on the first five hundred dollars of the claim or decree, and one-half of one per centum on the excess of any sum thereof over five hundred dollars. *Provided*, That, when the value of the property is less than the claim, such commission shall be allowed only on the appraised value thereof.

For sale of vessels or other property under process in admiralty, or under the order of a court of admiralty, and for receiving and paying over the money, two and one-half per centum on any sum under five hundred dollars, and one and one-quarter per centum on the excess of any sum over five hundred dollars.

* * * * *

For attending the circuit and district courts, when both are in session, or either of them when only one is in session, and for bringing in and committing prisoners and witnesses during the term, five dollars a day.

For attending examinations before a commissioner, and bringing in, guarding and returning prisoners charged with crime, and witnesses, two dollars a day; and for each deputy not exceeding two, necessarily attending, two dollars a day.

For traveling from his residence to the place of holding court, to attend a term thereof, ten cents a mile for going only.

For travel, in going only to serve any process, warrant, attachment, or other writ, including writs of subpoena in civil or criminal cases, six cents a mile, to be computed from the place where the process is returned to the place of service, or when more than one person is served therewith, to the place of service which is most remote, adding thereto the extra travel which is necessary to serve it on the others. But when more than two writs of any kind required to be served in behalf of the same party on the same person might be served at the same time, the marshal shall be en-

titled to compensation for travel on only two of such writs; and to save unnecessary expense, it shall be the duty of the clerk to insert the names of as many witnesses in a cause in each subpoena as convenience in serving the same will permit.

In all cases where mileage is allowed to the marshal, he may elect to receive the same or his actual traveling expenses, to be proved on his oath, to the satisfaction of the court.

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COMMISSIONERS' FEES.

29 STAT., p. 184, SEC. 21. That each United States commissioner shall be entitled to the following-named fees, and none other; drawing a complaint, with oath and jurat to same, fifty cents; copy of complaint, with certificate to same, thirty cents; issuing warrant of arrest, seventy-five cents; issuing a commitment and making copy of same, one dollar; entering a return, fifteen cents; issuing subpoena or subpoenas in any one case, with five cents for each necessary witness in addition to the first, twenty-five cents; drawing a bond of defendant and sureties, taking acknowledgement of same and justification of sureties, seventy-five cents; for administering an oath (except to witness as to attendance and travel), ten cents; recognizance of all witnesses in a case, when the defendant or defendants are held for court, fifty cents; transcripts of proceedings, when required by order of court and transmission of original papers to court, sixty cents; copy of warrant of arrest, with certificate to same, when defendant is held for court, and the original papers are not sent to court, forty cents; order in duplicate to pay all witnesses in a case, for first witness, thirty cents, and for each additional witness five cents, and for oath to each witness as to attendance and travel, five cents; for hearing and deciding on criminal charges and reducing the testimony to writing when required by law or order of court, five dollars a day for the time necessarily employed: *Provided*, That not more than one per diem shall be allowed in the case, unless the account shall show that the hearing should not be completed in one day, when one additional per diem may be specially approved and allowed by the court; *provided further*, That not more than one per diem shall be allowed for any one day: *Provided further*, That no per diem shall be allowed for taking a bond or recognizance and passing on the sufficiency of the bond or recognizance and the sureties thereon when the bond or recognizance was taken after the defendant had been committed to prison upon a final commitment, or has given bond or been recognized for his appearance at court, or when the defendant has been arrested on a *capias* or bench warrant, or was in custody under any process or order of a court of record. For the examination and certificate in cases of application for discharge of poor convicts imprisoned for nonpayment of fine or fines and costs, and all services connected therewith, three dollars; for attending to a reference in a litigated matter, in a civil cause at law, in equity, or in admiralty, in pursuance of an order of the court, three dollars a day; for taking and certifying depositions to file in civil cases, ten cents

for each folio; for each copy of the same furnished to a party by request, ten cents for each folio; for issuing any warrant under the tenth article of the treaty of August ninth, eighteen hundred and forty-two, between the United States and the Queen of the United Kingdom of Great Britain and Ireland, against any parties charged with any crime or offence set forth in said article, two dollars; for issuing any warrant under the provision of the convention for the surrender of criminals between the United States and the King of the French, concluded at Washington, November ninth, eighteen hundred and forty-three, two dollars; for hearing and deciding upon the case of any person charged with any crime or offence, and arrested under the provisions of said treaty or of said convention, five dollars a day for the time necessarily employed.

Such commissioners shall keep a complete record of all proceedings before them in criminal cases, in a well bound book, which record book shall be delivered to and preserved by the clerk of the district court for such district on the death, resignation, removal, or expiration of term of the commissioner, for which record the commissioner shall receive no compensation.

WITNESSES' FEES.

REV. STAT. SEC. 848. For each day's attendance in court, or before any officer pursuant to law, one dollar and fifty cents, and five cents a mile for going from his place of residence to the place of trial or hearing, and five cents a mile for returning. When a witness is subpoenaed in more than one cause between the same parties, at the same court, only one travel fee and one per diem compensation shall be allowed for attendance. Both shall be taxed in the case first disposed of, after which the per diem attendance fee alone shall be taxed in the other cases in the order in which they are disposed of.

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REV. STAT. SEC. 249. No officer of the United States courts, in any State or Territory, or in the District of Columbia, shall be entitled to witness fees for attending before any court or commissioner where he is officiating.

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PRINTERS' FEES.

REV. STAT. SEC. 853. For publishing any notice, or order, required by law, or the lawful order of any court, Department, Bureau, or other person, in any newspaper, except as mentioned in sections thirty-eight hundred and twenty-three, thirty-eight hundred and twenty-four, and thirty-eight hundred and twenty-five, Title, "*Public Printing, Advertisements, and Public Documents*," forty cents per folio for the first insertion, and twenty cents per folio for each subsequent insertion. The compensation herein provided shall include the furnishing of lawful evidence, under oath, of publication, to be made and furnished by the printer or publisher making such publication.

REV. STAT. SEC. 854. The term folio, in this chapter, shall mean one hundred words, counting each figure a word. When there are over fifty and under one hundred words, they shall be counted as one folio; but a less number than fifty words shall not be counted, except when the whole statute, notice, or order contains less than fifty words.

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FEES: HOW PAID AND RECOVERED.

REV. STAT. SEC. 857. The fees and compensations of the officers and persons hereinbefore mentioned, except those which are directed to be paid out of the treasury, shall be recovered in like manner as the fees of the officers of the states respectively for like services are recovered.

FORMS.

LIBELS.

COLLISION—LIBEL IN REM FOR COLLISION.

To the District Court of the United States for the Southern District of New York.

The libel and complaint of A. B., owner of the steamship "Hispania," on his own behalf, and on behalf of the master, officers and crew of said steamship and as bailee of and on behalf of the cargo laden on said steamship at the times hereinafter mentioned, against the steamship "Etrusca," her engines, tackle, apparel and furniture, and against all persons intervening for their interest in the same, in a cause of collision, civil and maritime, alleges as follows:

First. At the times hereinafter mentioned the above-named libellant was a resident of the Kingdom of Great Britain and was the owner of the steamship Hispania.

Second. The steamship Etrusca, herein proceeded against, is now within the port of New York, and within the jurisdiction of this Honorable Court.

Third. On Saturday, the 10th of November, 18—, at about 5:10 o'clock P. M., a collision occurred between the said steamships Hispania and Etrusca, on the high seas, not far from the coast of Long Island, by reason of which the Hispania was sunk, and together with her cargo and the effects of her master, officers and crew, was totally lost.

Fourth. Upon information and belief, the libellant alleges that the following are the circumstances of the collision:

On the day above named the Hispania was on a voyage from various ports in the Mediterranean to the port of New York. She had made the Fire Island lightship in a fog, and had passed the same on her starboard hand and about a quarter of a mile off, at 2:35 P. M. and was slowly feeling her way along the coast of Long Island. The weather continued foggy, with a good breeze from about south and a moderate swell to the sea. The Hispania stopped at 4:20 P. M. to take soundings, and after sounding started onward at a rate of speed of about three and a half knots an hour. Her master and first and second officers were on the bridge, a competent man was on the lookout, and another at the wheel, and they, as well as the rest of the crew, who were variously employed in their respective duties, were faithfully attending thereto. The course of the Hispania at the time was about west-northwest, and her fog signals were duly blown as required by the regulations for avoiding collision up till the time of the collision hereinafter described.

At about five o'clock P. M. the whistle of a steamer, which afterwards proved to be the steamship *Etrusca*, outward bound from the port of New York on one of her regular voyages from that port to the port of Liverpool, England, was heard a little on the port bow of the *Hispania*, and was at once answered by a long blast of the latter steamship. At the same time the wheel of the *Hispania* was put to port and her course changed to northwest, and a single short whistle was blown to signify to the other steamer that the *Hispania* was going to starboard. The whistle of the *Etrusca* was heard several times, apparently drawing further on the port bow of the *Hispania*, and was every time responded to by the *Hispania* with the signal that she was going to starboard.

Under these conditions and circumstances, the *Etrusca* suddenly appeared through the fog at the distance of about two hundred or two hundred and fifty yards and about three points on the *Hispania*'s port bow, coming at a high rate of speed, and heading for the port side of the *Hispania* about amidships.

The master of the *Hispania* at once ordered his engines full speed ahead, which was the only thing that could be done to avoid collision, and her engines, were put full speed ahead and the steamship began to gather increased way, but the *Etrusca*, without apparently checking her speed or changing her course, which was somewhat north of east, as the libellant is informed and believes, struck the *Hispania* on the port quarter, about thirty feet forward of the stern, cutting off the whole after part of her, and passing on, the *Etrusca* disappeared in the fog.

Fifth. After the collision, the mariners of the *Hispania* examined their ship to see what damage was done, and, expecting that she would sink, prepared to leave the vessel, but though the after-compartment was at once filled with water, and much water entered the next one and the *Hispania* was helpless, she still floated, and after about twenty minutes, the *Etrusca*, which had received no damage, returned. The master of the *Hispania* requested the master of the *Etrusca* to tow the *Hispania* into harbor or into shallow water, which he at first agreed to do; but afterwards refused to do, alleging possible danger thereby to his own ship, and night coming on, the *Hispania* was anchored and her crew were transferred to the *Etrusca*, which lay by at anchor during the night.

On the morning of Sunday, November 11, 18—, as the *Hispania* was still afloat, her master desired to be put on board of her, but the master of the *Etrusca* refused, and the *Etrusca* returned to the port of New York, bringing with her the crew of the *Hispania*, which vessel, some time on said November 11, 18—, sank at her anchors, by reason of the injuries received in said collision and became, with her cargo and the effects of her master and crew, a total loss.

Sixth. And the libellant alleges that the collision was in no way due to any fault on the part of the *Hispania*, which was in all respects carefully managed, but was due to fault on the part of the *Etrusca*, in that she was navigated at too great speed in a fog, in that she did not give proper heed to the signals of the *Hispania*, in that she did not go under the stern of the *Hispania*, as, under the collision rules, she should have done, in that

she did not stop and reverse her engines in time as she should have done, and in that she was in other respects improperly and carelessly navigated; libellant further alleges and charges that the Etrusca was in fault in that she did not take measures after the collision to tow the said Hispania into harbor or into shallow water, whereby the loss and injury to her and her cargo might have been lessened, and that she did not take proper measures after said collision to procure assistance to get the said vessel into a place of safety.

Seventh. And the libellant further alleges that by reason of said collision he has suffered damage in the loss of the said steamer Hispania with her stores and munitions and her cargo and freight, and the effects of the master and mariners on board which were lost, and on account of the expenses arising out of said collision, in a sum which the libellant is at present unable to state with accuracy, but which, upon information and belief, he avers will amount to upwards of one hundred and seventy-five thousand dollars.

All and singular the premises are true and within the admiralty and maritime jurisdiction of this Court.

Wherefore the libellant prays that process in due form of law and according to the practice of this Honorable Court, may issue against the said steamship Etrusca, her engines, tackle, apparel and furniture, and that she may be condemned and sold to answer for the damages alleged in this libel; and that this court will hear the evidence which the libellant will adduce in support of the allegations of the libel and will enter a decree in favor of the libellant for the above mentioned damages and will order the same to be paid and satisfied out of the said proceeds of the steamship Etrusca, together with interest and with the costs of the libellant, and will otherwise right and justice administer in the premises.

B. & B., Proctors for Libellant,
No.— Wall Street, New York.

Southern District of New York, ss:

A. B., being duly sworn, says that he is the libellant above named; that he has read the foregoing libel and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

A. B.

Sworn to before me this }
day of , 18 }

POSSESSION—LIBEL IN REM BY THE OWNERS OF A VESSEL FOR POSSESSION.

To the District Court of the United States for the Southern District of New York.

The libel of A. B. and C. D., of Bath, merchants, owners of the schooner or vessel the Sea Gull, her tackle, apparel, and furniture, against the said

vessel, and against all persons intervening for their interest therein, in a cause of possession, civil and maritime, alleges as follows:

First. Libellants are the true and only owners of the schooner Sea Gull, her tackle, apparel, and furniture, and being such owners, on or about the tenth day of May, 18—, they appointed one E. F., as master of said vessel, to navigate and sail her for them, at wages agreed upon between them, and the said E. F. took possession of said vessel as master only, and continued to act as such master till the fifth day of August 18—, when the libellants removed him as master and appointed L. N. as master in his place.

Second. When the said L. N., so appointed master by the libellants, went on board said vessel, by their orders, to enter upon his duties as such master, the said E. F. refused to give up the possession or the papers of said vessel to the said L. N., or to the libellants, and still refuses to do so, although libellants have duly demanded the same.

Third. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and the said schooner is now within the jurisdiction of this Honorable Court.

Wherefore the libellants pray that process in due form of law, according to the course of this Honorable Court, in causes of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that the said E. F. may be personally cited to appear and answer all the matters aforesaid, and that the said vessel, her tackle, apparel, and furniture, may be delivered to the libellants, and that the said E. F. may be condemned to pay to the libellants their damages and costs in the premises, and that they may have such other and further relief in the premises as in law and justice they may be entitled to receive.

A. B., Proctor, etc.

(*Verification as in Form No. 1.*)

POSSESSION—LIBEL IN REM AGAINST MERCHANDISE FOR POSSESSION.

To the District Court of the United States for the Southern District of New York.

The libel of H. B., against Nine Cases of Merchandise, marked A 1 to 9, and against C. D., master of the ship or vessel the Carrier, in a cause of possession, civil and maritime, alleges as follows:

First. That libellant is a resident of the City of New York, and is engaged in the business of importing foreign merchandise, and has his place of business at No. — Pearl St. in the City of New York.

Second. On the 9th day of March, 18—, while the ship Carrier was lying in the port of Liverpool, England, and about to sail for the port of Philadelphia, John Brown, of Liverpool aforesaid, shipped on board said vessel, consigned to the libellant, nine cases of merchandise, marked A 1 to 9, and C. D., the master of said vessel signed the usual bill of lading for the same, whereby he agreed to deliver the same to the libellant, in New

York, on payment of the freight for the same at the rate of twenty cents per cubic foot.

Third. The said ship having arrived in the said port of New York, the libellant paid to the said master his freight on the said merchandise, and demanded the delivery thereof, but the said master refused to deliver the same to him unless the libellant would pay one hundred and fifty dollars as an average contribution, which the libellant was not bound to pay, not being liable therefor, and the said master still refuses to deliver to him the said nine cases, to the great damage of the libellant.

Fourth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and said merchandise is now within the jurisdiction of this Honorable Court.

Wherefore, the libellant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said nine cases of merchandise, and that the said C. D. may be personally cited to appear and answer, on oath, all the matters aforesaid, and that the said merchandise may be delivered to the libellant, and that the said C. D. may be condemned to pay to the libellant his damages and costs in the premises, and that libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

A. B., PROCTOR, etc.

(Verification as in Form No. 1.)

POSSESSION—A LIBEL IN REM BY THE OWNER TO RECOVER A VESSEL WITHHELD ON A CLAIM OF TITLE.

To the District Court of the United States, for the Southern District of New York.

The libel of Alfred Peabody, of Salem, in the Commonwealth of Massachusetts, merchant, against the schooner Lucinda Snow, her tackle, apparel, and furniture, and against one Samuel Rogers, of Portland in the State of Maine, and against all persons lawfully intervening for their interest in the said schooner, in a cause of possession, civil and maritime, alleges as follows:

First. That libellant is a resident of the City of Salem, in the Commonwealth of Massachusetts, and is and was at the time hereafter mentioned the true and lawful owner, absolutely, of the schooner Lucinda Snow, of ninety-nine tons burthen, now lying in the port of New York, and had the possession and employment thereof as such owner, till deprived of her as herein set forth.

Second. The said schooner is wrongfully withheld from the libellant by one Samuel Rogers, on an alleged ground of title, depending upon a pretended sale by one Dawson Lincoln, as master of said schooner Lucinda Snow, which sale was unauthorized, was without any necessity and with-

out any legal survey or condemnation of said schooner, was in violation of the duty of the said Dawson Lincoln as master, was in fraud of the libellant, and is utterly void, all as hereafter set forth.

Third. On or about the early part of the month of December, 18—, the libellant purchased the said schooner, then lying in the port of Boston, for the sum of \$2,400; upon such purchase being made, a bill of sale was duly executed and delivered by the then owners of said schooner to the libellant whereby the libellant became the legal owner of said schooner, and said schooner was duly registered according to the act of Congress in such case made and provided, as belonging to the libellant.

Fourth. Thereafter the libellant purchased and supplied, from his own means, a cargo and appointed one Dawson Lincoln as master of said schooner, and with said cargo, the said schooner sailed from the port of Boston, on or about the twenty-sixth day of December, 18—, with the said Lincoln as captain, bound to Vera Cruz, and arrived at and came to anchor near a place called Sacrificios.

Fifth. And the libellant further alleges upon information and belief that on or about the second day of May, 18—, the said Lincoln left the said schooner anchored at or near Sacrificios, with only the mate on board, and with all of the crew of the said schooner went some ten miles down the coast in the schooner's boat, and while so absent, a squall from the northward came up in the early part of the day, and parted one of the schooner's chains, and was driving her towards the shore directly on some old wrecks, when the mate, finding that she continued dragging her remaining anchor, and that she would inevitably go ashore in the vicinity of the old wrecks, slipped the remaining chain, and succeeded in running her on a smooth, clear beach, the schooner sustaining no injury in so going ashore, except the loss of a few sheets of copper from her bottom. Thereafter, and on the 5th of May, the said Lincoln, having returned to the vessel, called a survey on said schooner and on the following day exposed her for sale at auction, and the said Samuel Rogers bid her in at such sale, at the sum of \$1,750, and now asserts that he thereby became the legal owner of said schooner. And the libellant alleges that no necessity existed for said sale, and that the same was fraudulent, collusive, illegal, and void, and conferred no title whatever on the said Samuel Rogers. That on or about the third day after the alleged purchase at said sale, the said Rogers hove off the said schooner, with anchors and chains, at a very trifling expense, not to exceed, as the libellant believes, the sum of \$50 or \$100, and when so hove off, the said schooner had sustained no damage in her hull, spars, sails, rigging, or otherwise except the loss of a few sheets of copper off her bottom, and a little caulking necessary on her wales, and a chain and anchor. Being supplied with this slight amount of caulking, and one chain and anchor, she proceeded in a few days thereafter, without any other repairs, to New Orleans, a distance of about 800 or 1000 miles, and there took in a full cargo of corn and proceeded to New York, where she arrived in safety after a quick passage of fourteen days in a good and sound condition, on or about the sixth of August, 18—, without receiving any repairs except as aforesaid.

Sixth. After the said sale the said Lincoln retained the entire proceeds of said auction sale, no part which has ever been received by the libellant, or by any person for his account.

Wherefor the libellant prays that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said schooner *Lucinda Snow*, her tackle, apparel, and furniture, and that the said Samuel Rogers, and any other person claiming to have any interest in said schooner, may be cited to appear before this Honorable Court, and show cause why possession of the said schooner should not be delivered to the libellant as having full title to the possession thereof, and that this Honorable Court would be pleased to decree the said schooner to be delivered to the libellant, and that the said Rogers may be decreed to pay unto the libellant, all freight and freights earned by said schooner while in his possession, with damages and costs, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

M. & S. Proctors for Libellant.
A. F. S., Advocate.

(Verification as in Form No. 1.)

POSSESSION—SAFE RETURN—SALE—LIBEL IN REM BY A MINORITY OWNER TO OBTAIN SECURITY FOR THE SAFE RETURN OF A VESSEL, OR FOR A SALE.

To the District Court of the United States for the Southern District of New York.

The libel of A. B., of the city of New York, part owner of the brig *Packet*, against the said brig, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, and especially against C. D., part owner of said brig, in a cause of possession, civil and maritime, alleges as follows:

First. That the libellant is the true and lawful owner of one-quarter of the brig *Packet*, of the burthen of 200 tons, her tackle, apparel, and furniture, and boats, and the said C. D. is owner of the remaining three-quarters of said brig, and no other person is owner of said vessel or any portion thereof, and the said brig is now lying in the port of Hudson, in the Southern District of New York.

Second. The said C. D. has hitherto acted as ship's husband of said vessel, and has now the possession thereof, and declares his intention of dispatching said vessel on a sealing voyage to the Pacific Ocean. The libellant has expressed to said C. D., his dissent from said voyage, and has remonstrated with him on the subject, and still dissents from the same, but the said C. D. persists in his determination to send her on said voyage, and is now procuring her outfit and crew.

Third. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, furniture, and boats, and that all persons claiming any right in said vessel, and especially the said C. D., three-quarters owner as aforesaid, may be cited to appear and answer the matter aforesaid, and to show cause why the said C. D. should not be restrained from sending the said vessel on the said voyage until good and sufficient security shall be given in this court to the full value of the libellant's interest in said vessel, her tackle, apparel, furniture, and boats, for the safe return of said vessel to the said port of Hudson, where she belongs, and that this Honorable Court will be pleased to decree that such security be given or the possession of said vessel, her tackle, etc., be delivered to the libellant, with costs, or that the said vessel, her tackle, etc., may be sold under the direction of this Honorable Court, and the proceeds of such sale brought into this court, to be divided according to law; and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

A. B. Proctor, etc.

(Verification as in Form No. 1.)

SALE—PARTITION—A LIBEL IN REM BY A PART OWNER FOR A SALE OF THE VESSEL.

To the District Court of the United States for the Southern District of New York.

The libel and complaint of A. B., of the City of New York, against the brigantine Red Rover, her tackle, apparel, furniture and boats, and against C. D. and E. F. in a cause of licitation or partition, alleges as follows:

First. That the libellant is two-fifths owner of the brigantine Red Rover, her tackle, apparel, furniture, and boats; that C. D. is owner of two-fifths and E. F. is owner of one-fifth, and is also master of said vessel, and that the said vessel is now in the port of New York.

Second. In consequence of diversity of opinion and interest in relation to the employment of said vessel, which is irreconcilable, the said owners are unable to agree upon any voyage or business for said vessel. The libellant has named a reasonable price for said vessel, at which he is willing to sell his share, or buy the shares of his co-owners, but they refuse either to buy or sell, and, in consequence of their impracticability and obstinacy, he is unable to sell to any other person.

Third. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime

jurisdiction, may issue against the said brigantine, her tackle, apparel, furniture and boats, and that all persons claiming any right in said vessel, and especially the said C. D. and E. F., part owners and master as aforesaid, may be cited to appear and answer the matters aforesaid, and that the said vessel, her tackle, etc., may be sold under the direction of this Honorable Court and the proceeds thereof brought into court to be divided and distributed according to law, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

A. B., Proctor, etc.

(Verification as in Form No. 1.)

**SUPPLIES—LIBEL IN REM AGAINST A DOMESTIC VESSEL BY A SHIP JOINER FOR
LABOR AND MATERIALS—TO ENFORCE A STATE LIEN.**

To the District Court of the United States for the Southern District of New York.

The libel of William Robinson, against the bark Richard Alsop, her tackle, apparel, and furniture, and against all persons intervening for their interest in said bark, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellant is, and at the times hereinafter mentioned was a ship joiner, having his place of business at Greenport in the city of New York, and within the Eastern District of New York.

Second. The said bark Richard Alsop is a domestic ship, and is now owned, or was, at the time hereinafter mentioned, owned by some persons who are resident in the State of New York, who are to the libellant unknown, but who, as he is informed and believes, reside in the city of New York.

Third. While the said bark, in the month of July 18—, was in the port of New York, in the district aforesaid, the libellant furnished certain materials and performed certain labor as a ship joiner (the particulars of which are mentioned and set forth in the schedule hereto annexed), towards the repairing, altering, equipping, and furnishing the said bark, at the request of the said master, and at the prices in the said schedule mentioned. The charges in said account are just and reasonable, and the said materials furnished, and such labor done upon the said vessel, were necessary and proper, to the repairing, altering, equipping, and furnishing the said bark.

Third. The said labor was performed upon the said vessel, and said materials so furnished, have gone into the said bark, and have become part thereof, and the said repairs done, labor performed, and materials furnished, amount in value to the sum of one hundred and eighty-eight dollars and seventy-nine cents, which sum remains wholly unpaid to this libellant.

Fourth. The amount due for said labor performed upon the said vessel, and such materials furnished to her, is by the law of the State of New

and labor upon same to make her seaworthy, which said materials, and work and labor, are particularly mentioned in a schedule hereunto annexed. The said materials furnished, and work and labor done and performed by these libellants, amount in value to sixty-seven dollars and forty-five cents. At the same time said libellants furnished a berth for said steamboat to lie at one of the wharves of the said city of New York, the wharfage whereof amounts to thirty-six dollars. All of said materials furnished, and work and labor done and performed upon said steamboat or vessel, and said berth or wharfage were necessary for said steamboat or vessel, and said work, labor, and wharfage together amount in value to \$113.45 and are a lien upon said vessel. A specification of such lien has been duly filed according to the statutes of the State of New York in the office of the clerk of the county of New York.

Third. The master of said steamboat or vessel, and her owners, have never yet paid to these libellants said sums of money, or any part thereof, but have hitherto wholly neglected and refused so to do.

Fourth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore libellants pray, that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said steamboat Fanny, her tackle, apparel, and furniture, that all persons claiming any right, title, or interest in the said steamboat or vessel may be cited to appear and answer on oath all and singular the matters aforesaid, and that the said steamboat may be condemned and sold to pay the demands and claims aforesaid, with interest and costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

D. E. W., Proctor.

J. Q. M., Advocate.

(Verification as in Form No. 1.)

SCHEDULE.

(A copy of the bill of items.)

ADVANCES—A LIBEL IN REM AGAINST THE SHIP AND FREIGHT FOR MONEYS ADVANCED TO PAY REPAIRS.

To the District Court of the United States for the Southern District of New York.

The libel of Hiram Benner against the brig Joseph Gorham, her tackle, apparel, furniture, and freight, and also against all persons lawfully intervening for their interest in the said brig, in a cause of contract, civil and maritime, alleges as follows:

First. That libellant is a resident of Key West, Florida, and the brig Joseph Gorham is now within the port of New York, and within the jurisdiction of this Honorable Court.

Second. The brig Joseph Gorham is now owned, and was at the times hereinafter mentioned owned by persons who are to the libellant unknown; the said brig belongs to the port of Charleston in the State of South Carolina, and at the times hereinafter named, one John Williams was her master.

Third. The said brig, sometime in the early part of June 18—, sailed from the said port of Charleston, bound to the said port of Key West, under the command of the said John Williams. In the course of her voyage, and on or about the twentieth day of June 18—, she went ashore on the Florida Reef, and suffered great damage. She was subsequently taken off and carried into Key West, where it was found that it was necessary that she should undergo a course of thorough and expensive repairs, and be furnished with certain supplies, in order to render her seaworthy and fit to go to sea.

Fourth. The said John Williams, master as aforesaid, accordingly went on and repaired said brig, and purchased said supplies, the expenses of such repairs and supplies necessarily amounting to about twenty-one hundred dollars. The said John Williams, not having the funds to pay for the said repairs and supplies, applied to this libellant at Key West aforesaid, for a loan of part of the amount, necessary for that purpose. And this libellant accordingly advanced to the said John Williams, for the use of the said brig, and on her credit, on the eighth day of July 18—, the sum of sixteen hundred and six dollars and seventy-five cents, to be repaid to this libellant on the arrival of the said brig at New York (to which port she was destined from Key West aforesaid), and the said sum of sixteen hundred and six dollars and seventy-five cents, was applied by the said John Williams towards payment of the said repairs and supplies.

Fifth. Shortly after the making of the said advance by this libellant, the said brig sailed from Key West for the port of New York, where she arrived on the eighth of May, 18—. After her arrival at the said port of New York, this libellant applied to the said John Williams, master as aforesaid, for repayment of the said amount so advanced by him as aforesaid, which the said master declined to do. The said brig has now been taken possession of by one of her said owners, who refuses to recognize the said debt, or make any provision therefor, to the damage of this libellant in the full sum of sixteen hundred and six dollars and seventy-five cents.

Sixth. The said brig, on her said voyage from Key West to New York, brought a cargo, the whole or the greater part of which is now on board of the said brig, and the freight whereof is still uncollected.

Seventh. All and singular the premises are true, and within the admiralty and maritime jurisdiction of this Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said brig, her tackle, apparel, furniture, and freight, wheresoever the same shall be found, and that all persons claiming any right, title, or interest therein may be cited to appear and to answer, upon oath, all and singular the matters aforesaid, and that this

Honorable Court would be pleased to decree the payment of the amount so due to the libellant, with costs, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

G. & H., Proctors for Libellant.
G., Advocate.

(Verification as in Form No. 1.)

**SUPPLIES—A LIBEL IN PERSONAM AGAINST THE OWNERS FOR SUPPLIES ORDERED
BY THE MASTER IN A FOREIGN PORT.**

To the District Court of the United States for the Southern District of New York.

The libel of S. L., and J. C., against G. H., and J. T., now or late owners of the brig or vessel called the *Gulielma*, in a cause of contract, civil and maritime, alleges as follows:

First. That at the times hereinafter mentioned, the libellants were and now are residents of Boston, Massachusetts, and were and are the sole owners of a certain brig or vessel known as the *Gulielma*, and the respondents are residents of the City of New York.

Second. At various times during the year 18—, the brig *Gulielma*, then under the command of Richard Smith, was lying at Boston, and stood in need of stores, provisions, and other necessaries, to enable her to perform her intended voyage or voyages. At such times the libellants, at the request of the master of the said brig, did furnish to and for the use of the said brig, provisions, stores, and other necessaries, to enable said brig to perform her said intended voyage or voyages, the value of which stores, etc., amounted to the sum of four hundred and twenty-five dollars and five cents, and for which the libellants delivered a bill to the master, which said bill is hereunto annexed, signed, and approved by the said master; the said provisions, stores, and other necessaries were furnished on the credit of the said brig, and the master and owners thereof.

Third. The libellants have repeatedly requested the said master and the said owners to pay them the said sum of money so due the libellants, for the provisions, stores, and other necessaries so furnished as aforesaid, but the said master and owners have hitherto neglected and refused to pay the same, and still neglect and refuse so to do. And the sum of one hundred and sixty-nine dollars and five cents, with interest, is still due to the libellant over and above all payments and deductions.

Fourth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray that process in due form of law, according to the course of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said G. H., and J. T., owners as aforesaid, and that they may be required to answer, on oath, all and singular

the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount due as aforesaid, with interest and costs, and that the libellants may have such other and further relief as in law and justice they are entitled to receive.

B. & B., Proctors for Libellant.

SCHEDULE.

(A copy of the bill of items.)

SEAMEN—WAGES—SUMMARY PROCEEDINGS FOR—AFFIDAVIT TO OBTAIN SUMMONS.

Brig Lowell, Captain Wm. Lawrence, and Owners.

To BERNARD GLANCY, DR.

To wages as second mate, from July 10, 18—, to January 20,	
18—, at \$20 a month,	\$126 66
CREDIT.	
By one month's advance,	\$20 00
Cash in Gibraltar,	15 00
Cash in Messina,	30 00
Hospital money, 6 months,	1 20
	— — 66 20
Balance due,	\$60 46

Southern District of New York, ss.

Bernard Glancy, late mariner on board the brig Lowell, being duly sworn says that in July, 18—, he shipped on board the brig Lowell, whereof William Lawrence was, and still is, master, then lying in the port of New York, as second mate [or ordinary seaman, or mate, or cook, as the case may be], at the wages of twenty dollars a month, to perform a voyage to one or more ports in the Mediterranean, and back to the United States, and signed the usual shipping articles for said voyage, which are retained by the said master. That the deponent performed said voyage, and in all respects did his duty as such second mate, till the arrival of said vessel in the port of Palermo, where, without cause, he was turned ashore from said vessel by the said master, and prevented from performing the remainder of the voyage. That he returned to the United States as passenger in another vessel, and said brig Lowell arrived at the port of New York, on the 20th day of January, 18—, where she now is. That there is now due to him, for his wages on said voyage, a balance of sixty dollars and upwards, as shown by the above schedule, which is just and true, which balance the said master has refused to pay.

BERNARD GLANCY.

Sworn, January 30, 18—, }
before me, }

George W. Morton, United States Commissioner.

SEAMEN—WAGES—PRELIMINARY SUMMONS FOR SEAMEN'S WAGES.

To the Masters and Owners of the Brig Lowell.

I, George W. Morton, United States Commissioner, do hereby summon you to be and appear before me, at my office, at the United States Court, in the Federal Building in the city of New York, on the thirty-first day of January, 18—, at ten o'clock in the forenoon of that day, then and there to show cause, if any you have, why process of attachment should not issue from the District Court of this District against the brig Lowell, her tackle, apparel, and furniture, to answer the claim of Bernard Glancy, for mariner's wages.

Given under my hand, this thirtieth day of January, in the year of our Lord, one thousand eight hundred and—.

Geo. W. MORTON, U. S. Commissioner.

CERTIFICATE OF THE MAGISTRATE.

I hereby certify to the Clerk of the District Court for the Southern District of New York, that there is sufficient cause of complaint whereon to found admiralty process against the brig Lowell, her tackle, apparel, and furniture, to answer for the wages of Bernard Glancy.

January 31, 18—.

GEORGE W. MORTON, U. S., Commissioner.

SEAMEN—WAGES—SUMMARY—LIBEL IN REM FOR SEAMEN'S WAGES.

To the District Court of the United States for the Southern District of New York.

The libel of Bernard Glancy, mariner, against the brig Lowell, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, in a cause of wages, civil and maritime, alleges as follows:

First. That in the month of July, one thousand eight hundred and —, at the port of New York, the master of the brig Lowell, by himself or his agent, did hire the libellant to serve as second mate on board the said vessel, for a voyage to the Mediterranean and back to New York, at the wages of twenty dollars per month. For the due performance of the said contract, the libellant signed shipping articles, which the libellant prays may be produced to this Honorable Court, for further certainty in the premises; in pursuance of the said agreement, the libellant entered into the service of the said brig, as such second mate, on or about the tenth day of July, in the year aforesaid.

Second. The said brig having taken on board a cargo, proceeded therewith, and with the libellant on board, for the port of Gibraltar, where she safely arrived, and discharged her cargo, and made freight: she proceeded

thence to the port of Palermo, where she safely arrived, and where she completed her cargo.

Third. While the said vessel was lying at Palermo aforesaid, on the tenth day of December, 18—, the said master unjustly, and without any cause, and without the consent of the libellant, and against his will, turned him on shore, and would not permit him to perform the remainder of the voyage, and the said brig completed said voyage, and arrived at the port of New York, on the twenty-ninth day of January, 18—, where she now is.

Fourth. During the whole time the libellant was on board the said brig, he well and faithfully performed his duty as such second mate, and was obedient to all lawful commands of the said master, whereby he became entitled to demand wages for the whole voyage of said vessel, till her return to the United States; and at the time of his arrival in New York, there was due to him the sum of sixty dollars and upwards, over and above all just deductions.

Fifth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said brig Lowell, her tackle, apparel, and furniture, and that all persons claiming any right or interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of wages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same; and that the libellant may have such other and further relief in the premises, as in law and justice he may be entitled to receive.

B. & B., Proctors for Libellant.

(*Verification as in Form No. 1.*)

SEAMEN—WAGES AND SHORT ALLOWANCE—A LIBEL IN REM AND IN PERSONAM BY SEVERAL SEAMEN AGAINST A SHIP, FREIGHT, AND MASTER, FOR WAGES AND SHORT ALLOWANCE OF BREAD.

To the District Court of the United States for the Southern District of New York.

The libel of John C. Duffie, Alfred Sandford, Alexander Wilson, Benjamin Hoffman, Robert Twiss, and Charles M'Carthy, mariners, late seamen on board the bark Childe Harold, against the said bark, her tackle, apparel, and furniture, and against the freight due for her cargo lately laden therein; and against John Crosby, master of said vessel, in a cause of wages, civil and maritime, alleges as follows:

First. That in the month of November, 18—, at the port of New York, John Crosby, the master of the bark Childe Harold, by himself or his

agent, hired the libellants, the said Duffie, Hoffman, Wilson, Sandford, M'Carthy, and Twiss, to serve as seamen, and the libellant Howland, to serve as an ordinary seaman, on board said vessel, for and during a voyage from New York to one or more ports in South America and back to New York, at and after the rate of wages of eleven dollars per month to each of the libellants, except the libellant Howland, who was to receive the wages of seven dollars per month. In pursuance of the said agreement, the libellants entered into the service of the said vessel as such seamen as aforesaid, on or about the thirteenth day of the month of November, in the year aforesaid.

Second. The said vessel, having taken on board a cargo, proceeded therewith, and with the libellants on board, for the port of Callao, where she safely arrived, and delivered her cargo, and made freight: the said vessel, having then taken ballast on board, proceeded therewith, and with the libellants on board, for the port of Arica, where she safely arrived, and where she took on board some additional cargo, and proceeded to the port of New York, where she safely arrived on or about the fourth day of October 18—, where she now is. Since the arrival of the said vessel, the libellants have all been duly discharged from the service thereof.

Third. During the voyage from the port of Callao, to Arica, and from thence till the return of the vessel to this port, libellants were on a short allowance of good and wholesome ship bread (the bread that was furnished to the libellants being unfit for food) the said master having neglected to put on board the requisite quantity of provisions for the said voyage, according to the act of Congress in such case made and provided.

Fourth. During the whole time the libellants were on board the said vessel, they well and faithfully performed their duty as such seamen, as aforesaid, and were obedient to all lawful commands of the said master and the other officers of the vessel, whereby and by reason of being put on such short allowance as aforesaid, they became entitled to demand from the said vessel as follows:—The libellant Duffie, for his wages and short allowance, the sum of one hundred and forty-six dollars and upwards, and each of the libellants, Hoffman, Wilson, Sandford, Twiss, and M'Carthy, the sum of eighty-eight dollars and the libellant, Howland, the sum of fifty-six dollars.

Fifth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said bark Childe Harold, her tackle, apparel, and furniture, and her freight aforesaid; and that the said John Crosby, master of the said vessel, and all persons having any right, title, or interest in said bark, her tackle, apparel, and furniture, may be cited to appear and answer all the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the wages and damages for short allowance aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that

the libellants may have such other and further relief in the premises, as in law and justice they may be entitled to receive.

A. & B., Proctors for Libellants.

SEAMEN—WAGES AND EXPENSES OF CURE—A LIBEL IN REM BY A SEAMAN, INJURED IN THE SERVICE OF THE SHIP, FOR HIS SHARE OF THE VOYAGE, AND THE EXPENSES OF HIS CURE. ABB. ADM. p. 451.

To the District Court of the United States for the Southern District of New York.

The libel of George W. Stotesburg, late a seaman on board the ship Atlantic, whereof Thomas Wilcox now is, or late was, master, against the said ship, her tackle, apparel, and furniture, in a cause of wages, civil and maritime, alleges as follows:

First. That some time in the month of July, one thousand eight hundred and forty-five, the said ship Atlantic, then lying in the port of New London and destined on a three-years' whaling voyage to the North-West Coast, the then master, William Beck, by himself or his agent, hired this libellant as a green hand on board the said ship for the voyage aforesaid, on the two hundred and twenty-fifth lay or share of what should be taken, as wages, and this libellant signed the shipping articles, wherein the contract is fully set forth, and which he prays may be produced by the said master, as this Honorable Court shall direct.

Second. That on or about the fourth day of August, one thousand eight hundred and forty-five, this libellant went on board and into the service of the said vessel as a green hand, and the said ship, with the libellant on board, proceeded on her intended voyage, and cruised about the Western Islands and other places for the period of about seven months, when the said ship had arrived at Maui, in the Sandwich Islands.

Third. That as the said ship was going out of the harbor at Maui, on or about the sixteenth day of March, one thousand eight hundred and forty-eight, the libellant while engaged in the service of said vessel, and while doing his duty and obeying the commands of the master, fell from the main topsail yard, and was so severely injured that he was taken ashore to the hospital, where he remained confined to his bed for the space of twenty-one months, or thereabouts.

Fourth. That while this libellant was so confined in the hospital the said ship went to the North-West, and cruised thereabouts until the month of November, one thousand eight hundred and forty-seven, when she started for home, and on her way touched at Maui on or about the twentieth day of the said month, and took this libellant on board, and then proceeded directly to the port of New London, where she arrived on or about the twentieth day of April last, and has since come to this port, where she now is.

Fifth. That during the said voyage the said ship took a cargo of oil and bone of great value, being, as the libellant is informed and believes, four thousand seven hundred barrels of right whale, between forty and

fifty barrels of sperm, and forty-seven thousand pounds of bone; and the libellant claims to be entitled to demand and have of and from the said ship, her master and owners, his share or lay of the said cargo, being the two hundred and twenty-fifth part thereof, worth, as this libellant verily believes, the sum of three hundred dollars and upwards, which the master and owners of the said ship have hitherto refused and still refuse to pay, to the great damage of the libellant.

Sixth. That by reason of the injuries so received in the service of the said vessel, as above stated, the libellant has lost the use of one of his legs, and one of his arms is rendered almost useless, and by reason thereof he has been put to great expense already for medical advice, and before he can be restored must undergo an operation involving further expense to a large amount, and he claims to be entitled to demand and have of the said ship his reasonable expenses already incurred, and hereafter to be incurred, in and about his cure, and his reasonable support since his said injury, and till he shall be cured.

Seventh. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of this Honorable Court. In verification whereof, if denied, the libellant craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture, and that all persons having or pretending to have any right, title or interest therein, may be cited to appear and to answer all and singular the matters hereinbefore set forth, and that this Honorable Court would be pleased to decree the payment of the wages aforesaid, with costs, and that the libellant may have such other relief in the premises as in law and justice he may be entitled to receive.

B. & B., Proctors for Libellant.
B., Advocate.

(Verification as in Form No. 1.)

**SEAMEN—ASSAULT AND BATTERY—LIBEL IN PERSONAM BY A SEAMAN AGAINST
A MASTER AND MATE, FOR A JOINT ASSAULT AND BATTERY.**

To the District Court of the United States for the Southern District of New York.

The libel of Charles Grayman, against Charles Weeks and John Whittlesey, in a cause of assault and battery, civil and maritime, alleges as follows:

First. That the libellant was at the times hereinafter mentioned, a seaman on the ship *Louvre*, and at the same times the respondents were respectively master and mate of said ship, and at the present time respondents are within the city of New York, and within the jurisdiction of this Honorable Court.

Second. In the month of March, 18—, the libellant shipped on board the said ship *Louvre* for a voyage from New York to Rotterdam, and back to New York.

On or about the twenty-fifth day of March, while on the high seas, the libellant was lying in his berth in the forecastle while it was his watch below, and while there heard the mate call him to come upon deck, whereupon he immediately arose, but before he had fairly got out of the berth the mate sprang down into the forecastle, and seizing the libellant by the throat began to drag him along the floor, and the said master having come down with an iron belaying pin, struck the libellant with the same, whereby the libellant was much injured, and to this day bears the marks of the blows so received: upon another occasion to wit, on the 26th of March, 18—, the said mate, without the least cause or provocation, and without the slightest warning to the libellant, fell upon the libellant and beat him severely with his fist about the head and face, and the said master, coming from the other side of the deck, took a wooden belaying pin from the rail, and holding the libellant by the neck, struck the libellant five or six times on the head with the belaying pin, and with the assistance of the mate, then beat him with the same about his legs and body for some minutes; by reason of which beating, the face and head of the libellant were very much bruised, and his body also injured; and he still feels the effects of such beating. And the libellant by reason of the premises claims to be entitled to recover of the said master and mate damages to the amount of five hundred dollars.

Third. The said respondents Weeks and Whittlesey, at the present time have either fled from the jurisdiction of this court, or so concealed themselves that they cannot be found, but, upon information and belief, libellant alleges that they have goods and chattels in this district, and credits in the hands of E. D. H. & Co., of the city of New York, merchants.

Fourth. All and singular the premises are true,

Whereupon the libellant prays that a monition, in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said respondents Weeks and Whittlesey, and that they may be required to appear and answer on oath this libel, and all and singular the matters aforesaid, and, if they cannot be found, that their goods and chattels, and if none be found, their credits and effects in the hands of E. D. H. & Co., of the city of New York, may be attached, to the amount sued for, with costs, and that said E. D. H. & Co., may be cited to appear and answer on oath as to credits and effects in their hands belonging to said respondents, and that this Honorable Court would be pleased to decree the payment of the damages sustained by the libellant, with costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

W. R. B., Proctor for Libellant.

E. C. B., Advocate.

(Verification as in Form No. 1.)

**BOTTOMRY—LIBEL BY THE HOLDER OF A BOTTOMRY BOND AGAINST SHIP,
FREIGHT, AND MASTER.**

To the District Court of the United States for the Southern District of New York.

The libel of Charles C. Keyser, against the brig Bridgeton, her tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, and against her freight moneys, and against William Bennett, now or late her master, in a cause of bottomry, civil and maritime, alleges as follows:

First. That the libellant is a resident of Pensacola, Florida. At the times hereafter named, the respondent William Bennett was the master of a certain brig or vessel called the Bridgeton, which said vessel is now within the port of New York, and together with her freight moneys, is within the jurisdiction of this court, and, upon information and belief, the respondent William Bennett, is also within the jurisdiction.

Second. The said brig Bridgeton, while on a voyage from La Guayra to the port of New York, during the month of August, 18—, encountered a severe storm and gale, which injured the said brig, so that she was obliged to bear away for Pensacola, to enable her to perform her intended voyage to New York. Thereupon the said William A. Bennett, her master as aforesaid, at Pensacola, being in want of money to pay for the repairs of said brig and fit her for sea, and having no other means of procuring the same, borrowed from the libellant, the sum of two thousand one hundred and seventy-nine dollars, upon the bottomry and hypothecation of the said brig and freight.

Third. In consideration of the said loan by the libellant, the said William A. Bennett, master, did by a certain bond or instrument of bottomry and hypothecation, bearing date at Pensacola, the seventeenth day of September, A. D. 18—, by him duly signed and executed, bind the said brig, her tackle, apparel, and furniture, and also the freight which might become due thereafter to the owners of the said brig for her then voyage, as security for the payment of said sum of twenty-one hundred and seventy-nine dollars; and the said master did further agree in and by the said bond, that the said brig, her tackle, apparel, and furniture, her freight moneys, and he, the said master, should be at all times liable and chargeable for the payment of the said loan until the payment thereof. A copy of the said bottomry bond is hereto annexed, marked Schedule A.

Fourth. The said brig could not have sailed from Pensacola, if the said sum had not been advanced and paid to her master as aforesaid. Upon being repaired by means of the moneys advanced by libellant, the said brig proceeded to the port of New York, where she arrived October 29, 18—, and now remains.

Fifth. The libellant has not received the aforesaid sum of twenty-one hundred and seventy-nine dollars, though the same has been demanded, and the said bottomry and hypothecation remain entirely unsatisfied.

Sixth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said brig Bridgeton, her tackle, apparel, and furniture, and her freight, and against the respondent William Bennett, and that said respondent, and all persons having, or pretending to have, any right, title, or interest in the said brig and her freight moneys, may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the amount so due, with interest and costs, and that the said brig, her tackle, apparel, and furniture, and freight and cargo, may be condemned to pay the same; and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

B. & B., Proctors for Libellant.
B., Advocate.

(Verification as in Form No. 1.)

SCHEDULE A. COPY BOND.

To all men to whom these presents shall come: know ye, that

I, William Bennett, mariner, and master of the brig Bridgeton, of New York, of the burden of 126 51-65ths tons, now at anchor in the Bay of Pensacola, and in prosecution of a voyage from La Guayra to New York, have put into Pensacola Bay for the purpose of making repairs, and that I have borrowed of Charles C. Keyser, of Pensacola, Florida, the sum of twenty-one hundred and seventy-nine dollars and eighteen cents, which amount was, at my request, and to fit the said brig for sea, advanced and expended by the said Charles C. Keyser: Wherefore know ye, that I, the said William Bennett, for and in consideration of the premises and of one dollar in hand paid, by said Charles C. Keyser, have bound myself, and by these presents do bind myself, my heirs, executors, and administrators, and also the owners of the said brig, and the said brig Bridgeton, the tackle and apparel of the same, together with the freight now due, and which may become due hereafter to the owners of the said brig Bridgeton for her present voyage, pledging and hypothecating all and singular the same to the said Charles C. Keyser, his heirs, executors, and administrators, for the payment in full of the said amount so borrowed, together with interest thereon at and after the rate of 18 per cent. And I, the said William Bennett do hereby covenant with the said Charles C. Keyser, that I am the master of the said brig Bridgeton, and have authority to charge the same, her owners and her freight, as aforesaid, and that the same shall at all times be liable and chargeable for the payment of the said sum so borrowed and advanced, until the payment thereof, according to the true intent and meaning of these presents.

In witness whereof, I have hereto set my hand and seal to three bonds of this tenor and date, one of which being satisfied, the others are to be

null and void, at Pensacola, Florida, this seventeenth day of September, A. D. 18—.

WM. BENNETT. [L. S.]

Witnesses—

H. F. INGRAHAM.

WILLIAM LIDERS.

BILL OF LADING—LIBEL IN REM AGAINST A SHIP BY A CONSIGNEE OF GOODS, ON A BILL OF LADING, FOR NOT DELIVERING THE GOODS IN GOOD ORDER.

To the District Court of the United States for the Southern District of New York.

The libel and complaint of Herman Boker, against the Norwegian brig or vessel called the Aurora, her tackle, apparel, and furniture, and against all persons intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. That libellant is a merchant, resident in the city of New York, and the brig Aurora is now within the port of New York, and within the jurisdiction of this Honorable Court.

Second. In the month of March, 18—, one Maurice Harting shipped on board said brig, then lying in the port of Antwerp, in the kingdom of Belgium, and bound to the port of New York, in good order and well conditioned, to be carried and transported in said brig to the port of New York, and delivered to the libellant in like good order and condition, eighty-seven packages of merchandise, for the freight of three and a half dollars per ton of one thousand kilograms and average accustomed, to be paid by the libellant, the said Maurice Harting receiving therefor, from the master of said brig a bill of lading, whereby and wherein the said master charged himself and the said vessel, her tackle, apparel, and furniture, for the performance of said contract. A copy of the said bill of lading is hereto annexed, and made a part of this libel.

Third. The said brig sailed from the said port of Antwerp for the port of New York, where she arrived on or about the twentieth day of May, 18—; but the said vessel has not delivered the said merchandise to the libellant in good order and well conditioned; but owing to the careless, negligent, and improper manner in which the said merchandise was stowed, and the want of proper care on the part of the said master, his officers and crew, and persons employed by him or them, seventeen packages containing cutlery and other hardware, and iron goods have been damaged, whereby the libellant has sustained damages to the amount of twelve hundred dollars.

Fourth. The said brig is a foreign vessel, and is about to leave this port and the United States, and the master has refused, and refuses, to deliver said merchandise in good order, so that the libellant will be without remedy unless by proceedings against said vessel, her tackle, apparel, and furniture.

Fifth. All and singular the premises are true, and within the admiralty

and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this court in cases of admiralty and maritime jurisdiction, may issue against the said brig, her tackle, apparel, and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the damages aforesaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

B. & B., Proctors.

B., Advocate.

(Verification as in Form No. 1.)

(Annex a copy of the bill of lading.)

**BILL OF LADING—A LIBEL IN PERSONAM AGAINST A CONSIGNEE FOR FREIGHT,
ON A BILL OF LADING.**

To the District Court of the United States for the Southern District of New York.

The libel of A. F. Jenness, William Chase, and Edward Leavitt, composing the firm of Jenness, Chase & Co., against Christopher R. Robert, and Howell L. Williams, composing the firm of Robert & Williams, of the city of New York, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellants are, and were, at the times hereinafter mentioned, the owners of the bark Ranger, and the respondents are merchants, having a place of business at 49 Front Street, in the city of New York, and within the Southern District of New York.

Second. In the month of May 18—, the said bark then lying in the port of Cardenas, and destined on a voyage thence to the port of New York, one A. B. shipped on board the said vessel at said port, twenty hogsheads of sugar, weight and contents unknown, to be therein carried from the said port of Cardenas to the port of New York, and there to be delivered, the dangers of the seas only excepted, in like good order as they were received, to the respondents, Robert & Williams, or to their assigns, he or they paying freight for the same at the rate of four dollars and fifty cents per hogshead, without primage and average accustomed. And, accordingly, the master of said bark, at the port of Cardenas, on the sixteenth day of May, 18—, affirmed to the usual bill of lading for such cargo, and delivered the same to the shipper of said cargo. A copy of the bill of lading is hereto annexed, marked Schedule A.

Third. In the same month said A. B. also shipped on board the said bark for the same voyage, eighty hogsheads of Muscovado sugar and seventy-nine hogsheads of molasses, to be likewise delivered at the port of New

York to the respondents, or to their assigns, he or they paying freight for the same at the rate of four dollars and seventy-five cents for each hog-head of sugar, and two dollars and fifty cents for each one hundred and ten gallons, gross custom house gauge of the casks delivered, of molasses, in New York. And the master of said bark, on the seventeenth day of May, 18—, signed the usual bill of lading for said cargo, and delivered the same to the shipper. A copy of which bill of lading is also hereto annexed, marked Schedule B.

Fourth. Thereafter the said bark, with the said cargo on board, set sail from Cardenas for New York, and in due time safely arrived, and the said sugar and molasses were duly delivered to the said Robert & Williams, and were by them accepted and received.

Fifth. By reason of the premises, the said Robert & Williams became bound to pay to these libellants the freight for the said merchandise, which amounted in the whole to the sum of seven hundred and eighteen dollars and twenty-seven cents, as is more particularly set forth in the schedule hereto annexed, marked C.

Sixth. The said Robert & Williams, respondents herein, have refused to pay the freight for the same, and there is now due the libellants for the freight on said merchandise, the sum of seven hundred and eighteen dollars and twenty-seven cents, with interest.

Seventh. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays, that a monition in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said Robert & Williams, and each of them, and that they be cited to appear and answer upon oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree payment of the freight aforesaid, with interest and costs, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

C. L. B., Proctor for Libellant.

B., Advocate.

(*Verification as in Form No. 1.*)

SCHEDULE A.

Shipped in good order and condition, by A. B., on board the bark called the Ranger, whereof Woodbury Dyer is master, now lying at the port of Cardenas and bound for New York, twenty hhds. sugar, weighing thirty-three thousand two hundred and nineteen pounds nett, being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of New York, the dangers of the sea only excepted, unto Messrs. Robert & Williams, or to their assigns, he or they paying freight for the same, four dollars and fifty cents per each hhd., without primage and average accustomed. In witness whereof, the master or purser of the

Union
No. 1—20.

said vessel hath affirmed to four bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in Cardenas, the 16th day of May, 18—.

WOODBURY DYER.

SCHEDULE B.

Shipped in good order and well conditioned, by A. B., in and upon the good bark called the Ranger, whereof Woodbury Dyer is master for this present voyage, and now lying in the port of Cardenas and bound for New York, eighty hhds. of Muscovado sugars, containing one hundred and eighteen thousand six hundred and twenty-six pounds, nett, and seventy-

W. R.
80 hhds. of
Muscov. Sugar
79 hhds. Mo-
lasses on
deck.

nine hhds. of molasses, containing eleven thousand three hundred and seventy-four gallons, of which seventy-nine hhds. are on deck, being marked and numbered as in the margin, and to be delivered in the like good order and condition at the aforesaid port of New York, all and

every the dangers and accidents of seas and navigation of whatever nature or kind excepted, unto Messrs. Robert & Williams, or to their assigns, he or they paying freight for the said goods, four dollars and seventy-five cents per each hhd. of sugar, and two dollars and fifty cents per each one hundred and ten gallons, gross custom house gauge, of the casks delivered of molasses in New York. In witness whereof, the master of the said bark has affirmed to three bills of lading, all of this tenor and date, one of which being accomplished the others to stand void.

Dated in Cardenas, the 17th May, 18—.

Weight and contents unknown.

WOODBURY DYER.

SCHEDULE C.

Messrs. ROBERT & WILLIAMS,

To Bark RANGER,		DR.
To Freight from Cardenas,		
20 hhds. Sugar	at \$4 50	\$ 90 00
80 " "	4 75	380 00
79 " Molasses, 10,924 galls. gross gauge		
casks, at \$2.50 pr. 110 galls.		248 27
		<hr/>
		\$718 27

CHARTER—LIBEL IN PERSONAM BY A CHARTERER ON A VERBAL CHARTER, WITH PRAYER FOR FOREIGN ATTACHMENT.

To the District Court of the United States for the Southern District of New York.

The libel and complaint of William Quirk, against Peter Clinton, in a cause of contract, civil and maritime, alleges as follows:

First. That on June 16, 18—, the said Peter Clinton was owner and master of the brig Growler, of New York. On or about said date, the

respondent, at the port of New York, by James Smith, his duly authorized agent and broker, chartered said brig to the libellant for a voyage from the port of New York to Wilmington, North Carolina, and thence to London, to carry a full cargo of turpentine from Wilmington to London, at the freight of four shillings sterling per barrel, the amount of the charter to be paid on the discharge of the cargo in London.

Second. Said charter was made verbally and not in writing. A few days after the same was so agreed on, the respondent, as the libellant has been informed and believes, chartered the said brig to other persons for a different voyage, and libellant alleges that respondent now refuses to fulfill said charter to the libellant.

Third. The libellant has sustained damage to the amount of six hundred and twenty dollars and upwards, by reason of the premises.

Fourth. Upon information and belief the respondent has goods and chattels within this district, to wit, the said brig Growler, and if she has sailed, the respondent has credits and effects in the hands of Matthew Clinton and William Clinton, of South Street, New York.

Fifth. All and singular the premises are true, and within the jurisdiction of this Honorable Court.

Wherefore the libellant prays, that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said Peter Clinton, and that he may be compelled to appear and answer upon oath all and singular the matters aforesaid, and if he cannot be found, that an attachment may issue against his goods and chattels, and if none be found, that his credits and effects in the hands of Matthew Clinton and William Clinton, of said district, garnishees, be attached, and the said garnishees summoned to answer on oath as to the respondent's credits and effects in their hands, and that this Honorable Court would be pleased to decree payment of the damages aforesaid, with costs, and that the libellant may have such other and further relief as he may be entitled to receive.

A. B., Proctor, etc.

(Verification as in Form No. 1.)

CHARTER—LIBEL IN REM AND IN PERSONAM ON A CHARTER PARTY, WITH PRAYER FOR PROCESS IN REM AND FOR FOREIGN ATTACHMENT.

To the District Court of the United States for the Southern District of New York.

The libel and complaint of A. B., against the N. Steamship Company, Limited, and against the steamship E., her engines, etc., in a cause of contract, civil and maritime, alleges as follows:

First. At all the times heretofore mentioned, the libellant was and still is a resident of the city and state of New York. At the same times, as

libellant is informed and believes, the respondent, the N. Steamship Company, Limited, was and is a corporation organized and existing under the laws of the Dominion of Canada, and was and is the owner of the steamship E.

Second. On or about the 31st day of May, 18—, the respondent, the N. Steamship Company, Limited, entered into a charter party with the libellant whereby the said respondent agreed to let and the said libellant agreed to hire the steamship E. for a period of two months from the time of the delivery of said vessel, the charter containing among others, the following clause:

“22. Should the vessel be stranded or exposed to other
“perils resulting in the jettison of bananas, and the
“vessel be ultimately saved, the ship owner agrees to pay
“to the charterer for the bananas jettisoned, fifty cents,
“United States currency, per stem of bananas, and fur-
“ther to assume all liability for the banana cargo's con-
“tribution to general average and salvage expenses.”

A copy of said charter is annexed hereto and made a part of this libel.

Third. The said steamship E., thereafter, during June, 18— and during the continuance of said charter, sailed for the port of Philadelphia, from the island of Cuba, with a cargo of bananas, and was stranded on Fish Key, Bahama Islands, and in consequence of such stranding, the master and crew of the vessel were obliged to and did jettison a part of said cargo, to wit, 11,130 stems of bananas, which became a total loss.

By reason of the jettison of the stems of bananas there became due to the libellant from the owner of the steamship E., under the provisions of the said charter party, the sum of \$5,565.

Fourth. The libellant also made certain advances for account of the steamship E., and furnished materials and repairs to the steamship during the life of said charter in the amount of \$1,000, making the total of \$6565, which is due under the terms of said charter, by said respondent and the said steamship E., to the libellant, which sum has been demanded and payment of which has been refused.

Fifth. The steamship E., is now in the port of New York, and within the jurisdiction of this Honorable Court, and, upon information and belief, the respondent, the N. Company, has credits and effects, to wit, certain charter hire from previous voyages of the steamship E., in the hands of the O. P. Company, of — Broadway, New York.

Wherefore the libellant prays that process in due form of law, according to the practice of this Honorable Court in causes of admiralty and maritime jurisdiction, may issue against the said steamship E., her engines, boilers, etc., and that all persons interested therein may be cited to appear and answer on oath all and singular the matters aforesaid; and that due process may also issue against the respondent, the above named the N. Steamship Company, Limited, and that that company may be cited to appear and answer on oath the matters aforesaid; and if said respondent cannot be found, then that its goods and chattels may be attached to the amount sued for with interest and costs, and if goods and

chattels belonging to it cannot be found, then that its credits and effects, to wit, the said debt, or moneys due to it from and in the hands of the said O. P. Company, may be attached in the hands of said company, garnishee; and that the said garnishee may be summoned to appear and answer on oath as to the credits and effects in its hands belonging to the respondent, the N. Company; and that this court will direct the payment by said respondent to the libellant of the sum of \$6565, and that the said steamship E., may be condemned and sold to pay same, together with interest and costs of this suit and that libellant may have such further and other relief as he may be entitled to receive.

W. C. & H., Proctors for Libellant.

(*Verification.*)

SCHEDULE.

A copy of the charter party.

CHARTER.—LIBEL IN PERSONAM BY A MASTER AND OWNER ON A CHARTER PARTY, AGAINST THE CHARTERER FOR CHARTER MONEY.

To the District Court of the United States for the Southern District of New York.

The libel of Henry M. Allen, against George Whitaker, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellant is master, part owner, and agent of the brig Josephus, of Mattapoisetts, and the respondent is a merchant, having his place of business at ——— Street, in the city of New York.

Second. In the month of March, 18—, at the port of New York, the libellant made and concluded with the respondent a charter party (a copy of which is hereto annexed, and to which the libellant craves leave to refer), bearing date the tenth day of March, in the year aforesaid, by which the libellant, for and in consideration of the covenants and agreements thereafter mentioned, to be kept and performed by the respondent, did covenant and agree on the freighting and chartering of the said brig Josephus unto the respondent for a voyage from the port of New York, to Antigua, La Guayra, and Puerto Cabello, and back to New York, on certain terms in the said charter party mentioned, that is to say:—

The said libellant engaged that the said brig in and during the said voyage should be kept tight, staunch, well fitted, tackled, and provided with every requisite, and with men and provisions for such voyage, and should take and receive on board during the aforesaid voyage, all such lawful goods and merchandise as the said respondent or his agent might think proper to ship;

The said respondent engaged to provide and furnish to the said brig the necessary cargoes or ballast for her lading at the several ports

aforesaid, and to pay to the said libellant, or his agent, for the charter or freight of the said brig during the voyage aforesaid,—

Five hundred and ten (510) dollars per calendar month for each and every month, and *pro rata* for any unexpired month, that said vessel might be employed, payable in current money of the United States, also to pay all the brig's foreign port charges, lighterage, and pilotage.

The master to have what money he might require in foreign ports for disbursements, and the balance payable on discharge of the cargo in New York.

Third. And the libellant further alleges and propounds, that on the twentieth day of March, in the year aforesaid, at the said port of New York, the said libellant loaded and received on board of the said brig a full cargo of lawful goods, with which the said vessel immediately set sail and proceeded to the port of Antigua, where she made a due delivery of such part of said cargo as was destined for Antigua and afterwards, to wit, on the twelfth day of April, in the year aforesaid, set sail and proceeded from the said port of Antigua to the port of La Guayra, where she made a due delivery of such part of said cargo as was destined to La Guayra aforesaid, and also took, loaded, and received on board of said brig five hundred bags of coffee and other merchandise, to be conveyed to New York, and thereupon set sail and proceeded to the port of New York aforesaid, where she afterwards, to wit, on the twenty-second day of May, 18—, arrived, and duly delivered said homeward cargo to the said respondent or his agents.

Fourth. On the discharge of the said homeward cargo at the port of New York, the sum of one thousand two hundred and forty-one dollars and upwards, for freight, foreign port charges, lighterage, and pilotage became and was due and payable from the said respondent to the libellant, according to the said charter party.

Fifth. The said respondent has paid to the libellant the sum of six hundred and forty-one dollars on account of the said charter, and no more, and has not paid the balance of six hundred dollars due thereon from the respondent to the libellant, on the discharge of the said cargo at the said port of New York.

Sixth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that a monition, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said respondent, and that he may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the said sum of six hundred dollars, with interest and costs, and that the libellant may have such other and further relief as in law and justice he is entitled to receive.

C. L. B., Proctor for Libellant.
E., Advocate.

(Verification as in Form No. 1.)

**CHARTER—LIBEL IN REM AND IN PERSONAM AGAINST A VESSEL AND OWNER, ON
A CHARTER PARTY FOR VIOLATION OF THE CHARTER.**

To the District Court of the United States for the Southern District of New York.

The libel of William Doughty, against the schooner William Seymour, of New York, her tackle, apparel, and furniture, and against Walter Carpenter, and against all persons lawfully intervening for their interest in the said schooner, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellant is a resident of the city of Washington, D. C., and, at the times hereinafter mentioned the respondent, Walter Carpenter, was master of the schooner William Seymour, which schooner and her master, the said Walter Carpenter, are now within the port of New York.

Second. On the sixth day of January, 18— the respondent Walter Carpenter, as master and owner of the schooner William Seymour, of New York, chartered the said vessel unto the libellant, for a voyage from the port of New York, to such landing or landings in Atachapala Bay, Louisiana, as the libellant might designate, there to take on board a full cargo of live oak timber, and return to New York, on the following terms: First: The said Walter Carpenter engaged that the said vessel, during said voyage, should be kept tight, staunch, well fitted, tackled and provided with every requisite, and with men and provisions necessary for such a voyage. Second: That the whole of said vessel, with the exception of the cabin and the necessary room for the accommodation of the crew, and of the sails, cables, and provisions, should be at the sole use and disposal of the libellant during the voyage aforesaid. Third: That he would take and receive on board the said vessel, during the aforesaid voyage, all such lawful goods and merchandise as the libellant or his agent might think proper to ship. And the libellant agreed with the said Walter Carpenter to charter and hire the said vessel as aforesaid on the following terms, that is to say: First: The libellant engaged to provide and furnish to the said vessel outward, one hundred barrels more or less of heavy freight, and also to furnish a full return cargo of live oak timber. Second: To pay to the said Walter Carpenter, or his agent, for the charter or freight of said vessel, during the voyage aforesaid, for the outward freight, nothing; and for the return cargo, the sums particularly mentioned in the said charter party; and to the true and faithful performance of the said charter party, the said Walter Carpenter and the libellant, each to the other, bound themselves and their heirs, executors, administrators, and assigns, and also the said vessel, her freight, tackle, and appurtenances, and the merchandise to be laden on board, in the penal sum of one thousand dollars.

Third. At and immediately after the making of the said charter party, and in accordance therewith, the libellant provided and furnished to the said vessel, for her said outward voyage, one hundred barrels more or less of heavy freight, and also advanced to the said Walter Carpenter the sum of two hundred and fifty dollars on account of the said charter party,

and the vessel set sail on her said voyage the 10th of February, 18—, and put in at Savannah, Georgia, on or about the 1st day of March, 18—.

Fourth. On the arrival of the said vessel at Savannah, and between the fifth and eleventh of March, 18—, the said Walter Carpenter refused to proceed with said voyage, and refused and neglected to take and receive on board and to carry libellant's return cargo of live oak timber, and caused a large part of merchandise supplied and put on board of said vessel by the libellant at New York, to be sold, and received the proceeds thereof, but has not rendered any account thereof to the libellant, by reason of all of which matters the libellant has been damaged in an amount which it is impossible at present to accurately allege, but which, upon information and belief the libellant avers to be the sum of five thousand dollars.

Fifth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said schooner William Seymour, her tackle, apparel, and furniture, and that the said Walter Carpenter, and all other persons having or pretending to have any interest in the said vessel, may be cited to appear and answer the matters aforesaid, and that this Honorable Court will be pleased to decree to the libellant such sum for damages for the violation of said charter party and for the disposal by the said Carpenter of the libellant's outward cargo, as may be just, and that the said Walter Carpenter may be decreed to pay the same, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

C. B. M., Proctor for Libellant.

D. E. W., Advocate.

(Verification as in Form No. 1.)

DEMURRAGE—A LIBEL BY SHIP'S HUSBAND AGAINST CHARTERERS, FOR
DEMURRAGE.

To the District Court of the United States for the Southern District of New York.

The libel of Sylvester Baxter, against David S. Draper and John B. Develin, of the city of New York, in a cause of contract civil and maritime, alleges as follows:

First. That at the times hereinafter mentioned, the libellant was ship's husband of the bark Arethusa, and the respondents are engaged in business in the city of New York as copartners under the firm name and style of Draper and Develin.

Second. On the 20th of August, 18—, the libellant made and concluded with respondents a charter party, of the bark Arethusa, wherein and

whereby it was agreed between the libellant and the respondents, among other things that the respondents should have fifteen lay days in New York within which to load and dispatch the said bark from the port of New York, and in case the vessel should be longer detained, the said respondents should pay the said libellant demurrage at the rate of thirty-five dollars per day, for each and every day so detained, provided such detention should happen by default of the said respondents or their agent; and it was further understood and agreed that the cargo should be received and delivered alongside, within reach of the vessel's tackles; and it was further understood and agreed that the said charter, and the said fifteen days, should commence when the said vessel was ready to receive cargo at New York, her place of loading, and notice thereof was given to the said respondent or to their agent.

Third. And libellant further alleges that the said bark was put in readiness to receive cargo at New York, and due notice thereof was given to the respondents, pursuant to the terms of the said charter party on August, 23, 18—. And the said respondents commenced to furnish the cargo. But notwithstanding the fact that the said bark was, from that time, at the direction and disposal of the said respondents, and notwithstanding that there was no fault or remissness on the part of the libellant, the said respondents, by their own default, did not load the said bark within fifteen days, but delayed her, contrary to the terms of the said charter party, until the eleventh day of September thereafter, and the libellant became thereby entitled to receive from the respondents demurrage for five days, at the rate of thirty-five dollars per day, amounting to the sum of one hundred and seventy-five dollars which sum is still due.

All and singular the premises are true,

Wherefore the libellant prays that a monition or citation, according to the course and practice of this Honorable Court in admiralty and maritime cases, may issue against the said respondents, and that they be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the demurrage aforesaid with costs, and that the libellant may have such other and further relief as in law and justice he is entitled to receive.

A. & B., Proctors.

(*Verification as in Form No. 1.*)

DEMURRAGE—A LIBEL BY THE OWNERS OF A VESSEL IN PERSONAM AGAINST THE CONSIGNEE OF THE CARGO, FOR UNREASONABLY DETAINING THE VESSEL.

To the District Court of the United States for the Southern District of New York.

The libel of James Sprague, Charles Keen, David Crowell, and Daniel Butler, against J. Selby West, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellants are and were at the times hereinafter specified, sole owners of the schooner John R. Watson, and the respondent is a

resident of the Southern District of New York and is now within the jurisdiction of this Honorable Court.

Second. In the month of December 18—, at Philadelphia, Richard Jones & Co. shipped on board the schooner John R. Watson one hundred and ninety-four tons of coal, or thereabouts, to be therein carried from Philadelphia to New York, and there delivered in like good order and condition (the dangers of the sea only excepted), to J. Selby West, or his assigns, he or they paying freight for the same, at the rate of ninety cents per ton; and accordingly the master of said schooner, at Philadelphia, on the fifteenth day of December, 18— signed the usual bill of lading.

Third. Shortly thereafter, the said schooner set sail from Philadelphia for New York, with the said coal on board, and there safely arrived on or about the nineteenth day of December; and on the following day, to wit, on December 20, 18—, the master of said vessel duly served upon J. Selby West, the consignee and owner of the coal, and respondent herein, a notice that said vessel was ready to discharge cargo.

Fourth. The said West accepted the said cargo, and commenced to receive the said coal, but refused to take it save in very small quantities, and at irregular times, and detained the said schooner until the fourth day of January, 18—, on which day the last of the cargo was taken out by him and his agents, and the schooner completely discharged, the discharge of her cargo having taken fourteen days.

Fifth. The usual and reasonable time to discharge such a cargo of coal is four days, and these libellants claim to be entitled to have of the said West the damages sustained by them by reason of the unjust detention of said vessel for the period of ten days beyond that time, at a reasonable demurrage rate of fifty dollars per day, amounting in all to five hundred dollars.

Sixth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore, the libellants pray that a monition, in due form of law, according to the course of this Honorable Court in admiralty and maritime cases, may issue against the said J. Selby West, and that he may be compelled to answer upon oath, all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree the payment of the damages aforesaid, with costs.

B. & B., Proctors.
E., Advocate.

(*Verification as in Form No. 1.*)

TOWAGE—LIBEL IN REM BY THE OWNER OF A STEAMER, AGAINST A CANAL BOAT, FOR TOWING HER.

To the District Court of the United States, for the Southern District of New York.

The libel and complaint of Reuben Smith, Jr., and Philemon H. Smith, against the canal boat W. Arnott, her tackle, apparel, and furniture, and

against all persons lawfully intervening for their interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellants are the owners of the tugboat *Metamora*, and that, at the instance and request of one Captain Best, master and owner of the canal boat *W. Arnott*, the said steamer towed the said canal boat from the port of Albany to the port of New York, between the ninth and eleventh days of November, 18—, and by agreement with the said Captain Best, they were to receive for the towing of the said canal boat the sum of twenty dollars; the said canal boat is now in the Southern District of New York, and the libellants have demanded the said twenty dollars, and the said captain has refused to pay the same.

Second. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellants pray that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against said canal boat *W. Arnott*, her tackle, apparel, and furniture, and that all persons having any interest therein may be cited to appear and to answer all and singular the matters hereinbefore set forth, and that this Honorable Court would be pleased to decree the payment of said sum, with costs, and that said canal boat may be condemned and sold to pay the same, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

W. J., Proctor for Libellants.
R., Advocate.

(Verification as in Form No. 1.)

**WHARFAGE—STORAGE—A LIBEL IN PERSONAM BY THE OWNER OF A WHARF
AGAINST A MASTER FOR WHARFAGE AND STORAGE.**

To the District Court of the United States for the Southern District of New York.

The libel of Daniel Jones, against Asa White, in a cause of contract, civil and maritime, alleges as follows:

First. That the libellant is the owner of a wharf in the city of New York, and the respondent is master of the ship *Ajax* of Bristol, England, and is now within the city of New York, and within the jurisdiction of this Honorable Court.

Second. On the tenth day of November 18—, the said Asa White placed the said ship *Ajax* at the wharf of the libellant, where she remained for the period of ninety-one days, for which the libellant is entitled to receive at the regular wharfage rates of the city, the sum of one hundred and eighty-two dollars, which the said respondent has refused to pay.

Third. The libellant is also the owner of a store-house in the city of

New York, and said respondent stored in said storehouse at the usual rates of storage, the sails and rigging of the said ship while the said ship was undergoing repairs, and the libellant is entitled to receive for such storage the sum of twenty-one dollars, which the said respondent has refused to pay.

Fourth. All and singular the premises are true.

Wherefore the libellant prays that a monition in due form of law, according to the practice of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said Asa White, master, as aforesaid, and that he may be required to answer on oath this libel and the matters herein contained, and that this Honorable Court will be pleased to decree to the libellant the payment of said wharfage and said storage, amounting to two hundred and three dollars, with interest and costs, and that he may have such other and further relief as in law and justice he may be entitled to receive.

A. B., Proctor.

C. D., Advocate.

(*Verification as in Form No. 1.*)

PASSENGERS—LIBEL AGAINST SHIP AND OWNERS, BY A PASSENGER, FOR A VIOLATION OF CONTRACT.

To the District Court of the United States for the Southern District of New York.

The libel of E. C. G., against the ship P., her tackle, apparel, and furniture, and against H. J. T. master and part owner, and F. G., part owner of the said ship, and against all persons lawfully intervening for their interest in said ship, etc., in a cause of contract civil and maritime, alleges as follows:

First. That the said ship P. at the several times hereinafter stated has been and is yet lying in this port and under the jurisdiction of this Court, bound to Panama. The respondents H. J. T. and F. G. were and are the sole owners of the said ship, and they have employed one J. K. as their agent to obtain passengers for the said ship on such voyage.

Second. The libellant, being desirous to go to Panama, applied to the said J. K. for information in regard to the terms and accommodations of the said ship, and also as to the time of her sailing from this port, whereupon the said J. K., so acting as agent for the ship, then and there represented and stated to the said libellant, that the said vessel was of the very best class and condition, and would take on said voyage only fifty passengers, and he marked out and represented to the said libellant where the libellant's state room should be, and represented that such state room was at least six feet square, well lighted, and ventilated, and represented that in consequence of the pressure of passengers, it was necessary for the libellant to engage his passage without delay.

Third. Relying upon such representations and other like deceptive and unfair representations, this libellant paid to the said J. K., as agent, the

sum of three hundred dollars, as and for his passage money in advance, and sent his baggage to said ship, and himself proceeded on board of said ship, ready to sail.

Fourth. The libellant thereupon ascertained, and alleges to be the fact, that the representations aforesaid were false and deceptive, that the owners of the said vessel have made and fitted up in the ship aforesaid, between decks (calling it a cabin), a number of berths and pretended state-rooms, which are close, confined, and unhealthy, and have engaged to take and transport in and on board of the said vessel as cabin passengers, one hundred and seventy-two persons, rendering it uncomfortable and unsafe for the libellant to proceed in such vessel upon the said voyage.

Fifth. The libellant, on discovery of the matter, refused to proceed on the said voyage and demanded a return of the said passage money paid by him, but the same has been refused, and the libellant by reason of the premises, has sustained and will sustain damages, as he believes, beyond the amount of said passage money, to the amount of one thousand dollars.

Sixth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said ship, her tackle, apparel, and furniture, and that the said H. J. T. and F. G., and all persons claiming any right, title, or interest in the said ship, may be cited to appear and answer upon oath all and singular the matters aforesaid, and that the court will be pleased to decree the return of said passage money, with interest and costs, and payment of the damages aforesaid; and that the libellant may have such other and further relief as in law and justice he is entitled to receive; and that the said ship, her tackle, apparel, and furniture, may be condemned and sold to pay the libellant's demands.

E. H. O., Proctor for Libellant.

F. B. C., Advocate.

(*Verification as in No. 1.*)

PASSENGERS—A LIBEL IN REM BY A PASSENGER AGAINST A SHIP, FOR DAMAGES IN NOT BEING SUPPLIED WITH PROVISIONS.

To the District Court of the United States for the Southern District of New York.

The libel of Peter M'Donald, for himself and on behalf of his wife, Alicia M'Donald, and also his children, Martin M'Donald, James M'Donald, Alicia M'Donald, Margaret M'Donald, and Catherine M'Donald, infants under the age of twenty-one years, against the British vessel known as the Aberfoyle, of Liverpool, her tackle, apparel, and furniture and against all persons law-

fully intervening for their interest therein, in a cause of damage, civil and maritime, alleges as follows:

First. That libellant is now a resident of the city of New York, and he, and those on whose behalf he brings his suit, were lately passengers on the British ship *Aberfoyle*, which said ship is now within the port of New York and within the jurisdiction of this Honorable Court.

Second. In the month of December, 18—, at Liverpool, England, the libellant for himself and for those on whose behalf he prosecutes, engaged passage from her duly authorized agent, on the said ship *Aberfoyle*, for the port of New York, the engagement of passage being substantially as follows: In consideration of the sum of twenty-two pounds sterling paid, the said libellant and his family were to be provided with a steerage passage from Liverpool to New York; and that three quarts of water per day, during said voyage, should be furnished to each of the libellant's family; and that seven pounds of bread, biscuit, flour, oatmeal, or rice, or a proportionate quantity of potatoes (five pounds of potatoes being computed as equal to one pound of the other articles), should be issued, not less often than twice a week, to the libellant and to each member of his said family. Whereupon libellant duly paid the said sum of twenty-two pounds sterling and with his said family, embarked on the *Aberfoyle* at Liverpool on December 26, 18— on which day the vessel set sail for New York.

Third. Shortly after the sailing of the said vessel, the master of the ship withheld from and refused to furnish to the said libellant and his family the said water and the said provisions so as aforesaid by the said agreement to be furnished, whereby the said libellant and his family, during the said voyage or passage as aforesaid, suffered great want, hunger and thirst, and starvation, to the great injury of the health and deprivation of the comfort of the libellant and his family, and to their damage in the sum of five hundred dollars.

Fourth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said vessel, her tackle, apparel, and furniture; and that all persons having any interest therein may be cited to appear and answer on oath all and singular the matters hereinbefore set forth; and that this Honorable Court would be pleased to decree payment of the damages foresaid, with costs, and that the said vessel may be condemned and sold to pay the same, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

W. M. A., Proctor for Libellants.
H. D., Advocate.

(Verification as in No. 1.)

PASSENGERS—LIBEL IN PERSONAM BY A FEMALE PASSENGER AGAINST THE MASTER OF A VESSEL, FOR INSULT AND INDECENCY.

To the District Court of the United States for the Southern District of New York.

The libel of J. E., against I. B., in a cause of damage, civil and maritime, alleges as follows:

First. That at the times hereinafter mentioned the respondent I. B. was a resident of this District, and was the master of the ship M., and the libellant was a passenger on said ship bound from Liverpool to New York.

Second. On or about the fourth day of September, 18—, at the port of Liverpool, in the United Kingdom of Great Britain and Ireland, libellant duly engaged cabin passage for herself and her child on the ship M. for the port of New York, and paid therefor the sum of £31.10 and embarked on said ship, which thereafter set sail for New York on the 7th of September, 18—.

Third. During said voyage, and on or about the seventh day of said September, while this libellant was asleep in the state room allotted to her, respondent entered said state room, awoke this libellant out of her sleep, and made indecent and insulting proposals to her, and upon this libellant ordering said respondent out of her said room, said respondent used indecent and vulgar expressions to her, and for several days in succession after the last-mentioned occurrence, respondent came into libellant's room, awakened her out of her sleep, attempted violence to her person, and used indecent and vulgar expressions; upon this libellant threatening to inform the other cabin passengers of his conduct towards her, said respondent shortly afterwards, and in the hearing of the other cabin passengers, ordered this libellant to remain in her room, and not to leave the same, and said that if the libellant attempted so to do he would send her amongst the steerage passengers, and closely confined libellant to her said state room for the space of two weeks; said respondent also falsely and maliciously slandered this libellant to other of the said passengers on board such ship during such voyage.

Fourth. The libellant was injured in health, fretted and annoyed in body and mind in consequence of such conduct of said respondent and was sick for some time after her arrival in said city of New York, and by reason of the premises is damnified in the sum of three thousand five hundred dollars.

Fifth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore libellant prays that a warrant of arrest, in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said respondent I. B., and that he may be required to answer, upon oath, this libel, and all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree the payment of the damages aforesaid, with costs, and

that the libellant may have such other and further relief as in law and justice she may be entitled to receive.

T. W. S., Proctor for Libellant.
W. Q. M., Advocate.

(Verification as in Form No. 1.)

SALVAGE—LIBEL IN PERSONAM AGAINST THE OWNER OF A SHIP, FOR SALVAGE.

To the District Court of the United States for the Southern District of New York.

The libel of William Peters, master of the steamship Amiable, for himself, and on behalf of all others entitled, against John Jones, in a cause of salvage, civil and maritime, alleges as follows:

First. That at the times hereinafter named, libellant was master of the steamship Amiable, and the respondent was sole owner of the brig Hercules and was and is a resident of the Southern District of New York.

Second. On the 1st day of November 18—, the libellant, being at sea, and bound to the port of New York, in the said steamship Amiable, observed a brig with a signal of distress flying, and immediately made for the vessel and discovered that she was aground on the beach, and was informed by her master that she was the brig Hercules, of New York, and had been aground for several hours, and had, by force of the wind and tide, worked so far into the sand, that he feared she would not float at high water, without assistance, and said master asked the libellant to assist him.

Third. The libellant thereupon consented to render such assistance as was in his power, and for that purpose let go his anchor and got out hawsers to said brig, and, by constant heaving, prevented her working further up into the sand, and at high water, succeeded in heaving her off without injury. Thereupon the master of the brig informed the libellant that he was bound to sea, and desirous of not being delayed, and that he would give the libellant a letter to his owner, the respondent John Jones, who would pay him his reasonable salvage. The said master thereupon gave the libellant a letter to said respondent, informing him that the libellant had rendered to the brig Hercules valuable assistance, and was entitled to salvage.

Fourth. The libellant therefore consented to allow the said brig to pursue her voyage, and on his arrival in the port of New York, he presented said letter to said owner, and for himself and his ship's company, and his owners, whose ship had been perilled in rendering such assistance, offered to accept the sum of five hundred dollars, if paid without delay or trouble to the libellant, although as he had previously been informed, said brig and cargo were worth the sum of thirty thousand dollars, and the said sum of five hundred dollars was an inadequate salvage compensation, but

said owner refused to pay the same, and to pay any more than fifty dollars.

Fifth. All and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore the libellant prays that process in due form of law may issue against the said John Jones and that he may be cited to appear and answer on oath the matters aforesaid, and may be decreed to pay to the libellant, and the others so entitled, a reasonable salvage compensation for the said assistance so rendered, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

A. B., Proctor and Advocate for Libellant.

(*Verification as in No. 1.*)

SALVAGE—LIBEL IN REM BY SEAMEN AGAINST A VESSEL AND CARGO FOR SALVAGE.

To the District Court of the United States for the Southern District of New York.

The libel of Joseph Smith, mariner, for himself and others interested as salvors, against the schooner Josephine, her tackle, apparel, and furniture, and cargo, in a cause of salvage, civil and maritime, alleges as follows:

First. That at the time hereinafter mentioned, the libellant and those on whose behalf he sues were mariners composing the crew of the steamer Plymouth.

Second. The steamer Plymouth, on a passage from Rio Janeiro to Boston, and being tight, staunch, and well found, and manned with a crew of about twenty men, on or about the thirtieth day of September, 18—, on the high seas, fell in with the wreck of the schooner Josephine, about four or five hundred miles from the port of New York, said schooner then drifting about at the mercy of the waves, entirely abandoned by her crew, and derelict, and having the appearance of having been broken open and partly plundered.

Third. After the discovery of said wreck, a boat was lowered from the steamer Plymouth, and a boat's crew sent on board to take possession of the said wreck so abandoned, and after considerable exertion they made fast to the said schooner with hawsers, and altering the course of the said Plymouth, proceeded to the port of New York with the said schooner and cargo in tow, and continued to tow her for about four days, when, having arrived at the port of New York, and in perfect safety, she was put in charge of the steamboat Hercules, which towed her to the wharf, in said port, where she now lies.

Fourth. Said schooner was at the time loaded with an assorted cargo, and was at the time of her wreck bound from Richmond to the West Indies, and had it not been for the assistance so rendered to the said schooner and cargo, the same would have been entirely lost.

Fifth. The libellant was on board said steamer Plymouth at the time of saving said schooner, and assisted in saving her and her cargo.

Sixth. By reason of the service so performed, the libellant and the others of the crew of the steamer Plymouth are justly entitled to salvage for such service, and to so much as has been and is usually allotted by this court to persons doing and performing the like service, with all charges and expenses attending the same.

Seventh. And all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this Honorable Court.

Wherefore the libellant prays, that process in due form of law, according to the course of this Honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said schooner, Josephine, her tackle, apparel, and furniture, and the cargo laden therein, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular the matters aforesaid, and that this Honorable Court would be pleased to decree such a sum of money, or proportion of the value of the said schooner Josephine and her cargo, to be due to the libellant and others, salvors, as a compensation for their salvage service, as shall seem meet and reasonable, together with their costs and expenses in this behalf sustained, and that the said schooner, her tackle, apparel, and furniture, and the cargo laden therein may be condemned and sold to pay the same, and that the libellant may have such other and further relief as in law and justice he may be entitled to receive.

B. & B., Proctors for Libellant.

(Verification as in Form No. 1.)

SALVAGE—LIBEL IN REM BY A MASTER, ON BEHALF OF ALL INTERESTED.

To the District Court of the United States for the Southern District of New York.

The libel of John Kingsbury, master of the steamship Merced, on behalf of himself and of all other persons interested, against the ship W., her tackle, apparel, furniture and her cargo, and against all persons intervening for their interest therein, in a cause of salvage, civil and maritime, alleges as follows:

First. That at the times hereinafter mentioned, the libellant was the master of the steamship Merced, of New York, and that the ship W., her tackle, apparel, and furniture and her cargo, are now within the port of New York, and within the jurisdiction of this Honorable Court.

Second. On the 27th day of August, 18—, the said steamship Merced was bound on a voyage from Havana, in the Island of Cuba, to Cadiz, Spain. On that day, while on the high seas, and in latitude — and longitude — those on board of her discovered a ship dismasted and apparently

deserted, whereupon they hauled up for and boarded her; they found the said ship to be the British ship W., of London, with twelve feet of water in her hold, totally dismasted and entirely abandoned by her captain and crew; no papers were found on board the said ship, but she had a full cargo of rum, sugar, and other West India produce on board.

Third. The said steamship Merced thereupon took the said ship W. in tow and made for the port of New York, where she arrived with the said ship on the twelfth day of September, 18—, the crew of the steamship being almost worn out with fatigue in pumping out the said ship, and other work done on board of her.

Fourth. All and singular the premises are true.

Wherefore the libellant prays that process in due form of law, according to the course of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said ship W., her tackle, apparel, and furniture and cargo, and that all persons claiming any interest therein may be cited to appear and answer upon oath all and singular the matters aforesaid, and that this Honorable Court will be pleased to decree to the libellant and to all persons interested, a reasonable and proper salvage, in proportion to the value of said vessel and cargo, and that the said ship, her tackle, apparel, and furniture, and cargo, may be condemned and sold to pay such salvage, with costs, charges and expenses, and that the libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

A. B., Proctor for Libellant.

(*Verification as in Form No. 1.*)

GENERAL AVERAGE—LIBEL IN REM FOR GENERAL AVERAGE.

To the District Court of the United States for the Eastern District of New York.

The libel and complaint of C. P. A., and R. D. A., co-partners under the firm name of L. W. & P., against the steamship S., her engines, tackle and equipment, and against the freight moneys of her cargo of sugar, in a cause of general average, civil and maritime, alleges as follows:

First. That at the times hereinafter mentioned the libellants above named were co-partners and merchants in the city of New York, under the firm name of L. W. & P.

Second. That in the month of September, 18—, the steamship S. was at Java, having gone there to be loaded with a cargo of dry sugar in baskets at ports or roads in Java, and being so loaded to proceed through the Suez Canal to a port of the United Kingdom, or Marseilles, or Genoa, or to Sandy Hook, for orders to discharge at New York, Boston, Philadelphia, or Baltimore.

Third. That in the months of September and October, 18—, there was loaded by said firm upon said steamship dry sugar in baskets, and bills of

lading given therefor, in each of which the master of said steamship acknowledged the receipt of the sugar therein mentioned in good order, and well conditioned, and agreed to transport the said sugar to the ordered port of discharge and there deliver the same in the like good order, to L. & Co., who were the bankers of libellants, to whose order said sugar was made deliverable, as security for moneys advanced, or agreed to be advanced by them on the account of the libellants under letters of credit issued by said bankers, and said bankers have been paid in full for all advances made by them thereon, and have delivered the bills of lading to libellants, who were the owners of said sugar.

Fourth. That thereafter the said steamship sailed with the said cargo laden on board consisting of 11,532 baskets of dry sugar, weighing 54,703 piculs 63 catties, equal to about 3,331 tons 4 cwt., having received orders to call at Sandy Hook, as provided in said charter, and while prosecuting said voyage, and on or about November 1st, 18—, while in the Suez Canal on her way to Port Said, a fire was discovered in the No. 2 hold, located forward of the engine room, to extinguish which and prevent the total loss of the vessel, cargo and freight, the master of said steamship caused the hatches to be opened, holes cut in the deck and water poured through said hatches and holes to extinguish the fire, the engines being kept going full speed in order to reach Port Said, to which port the master caused a call for assistance to be sent, and it being found impossible on account of the intensity of the fire to continue the voyage, the vessel was moored to the canal bank and like efforts to extinguish the fire continued, and assistance having been sent from Port Said, which reached the vessel on the same day, more water was on that day and the following day pumped into the No. 2 hold, and by flooding it and submerging the cargo there stowed, the fire was finally extinguished. That the water so poured into No. 2 hold destroyed the cargo of sugar there stowed and also destroyed a large part and greatly damaged a further portion of the cargo in the after holds.

Fifth. That the fire having been completely extinguished, said steamship, after discharging part of the cargo of sugar from No. 3 and No. 4 holds, and pumping the water out of her holds, was towed to Port Said, where she was repaired, and thereafter she proceeded on her said voyage and arrived in the port of New York on the 1st day of June, 18—, where she now is.

Sixth. That the said steamship and her freight moneys are liable to contribute in general average for the value of the libellant's sugar damaged and destroyed by the water poured into said steamship in order to extinguish said fire.

Seventh. That the freight upon the said cargo amounts to about the sum of ten thousand dollars (\$10,000) at rates specified in said charter.

Eighth. That the value of the damaged and destroyed sugar is estimated at the sum of two hundred and ten thousand dollars (\$210,000.) and the value of that brought forward about forty thousand dollars (\$40,000.).

Ninth. That the contributory value of said steamship is estimated at about the sum of one hundred and ten thousand dollars (\$110,000).

Tenth. That the amount of the contribution in general average which said steamship and freight should pay is estimated at the sum of forty thousand dollars (\$40,000.).

Eleventh. That said steamship is now within the port of New York and the jurisdiction of this Honorable Court.

Twelfth. That all and singular the premises are true.

Wherefore libellants pray that process in due form of law may issue against said steamship S. her engines, tackle, and apparel, and her freight moneys, and that all persons interested therein may be cited to appear and answer all and singular the matters aforesaid, and that the said steamship and her freight moneys may be condemned and said steamship be sold to pay the general average aforesaid to libellants, and that otherwise right and justice may be done.

C. P. A.

(*Verification as in Form No. 1.*)

FORFEITURE—A LIBEL IN REM BY THE GOVERNMENT FOR A FORFEITURE.

In the District Court of the United States, for the Southern District of New York. Of February Term of the year 18—.

Before the Hon. A. B., District Judge.

On the 6th day of February, 18—, comes S. A. W., Attorney of the United States of America, for the Southern District of New York, who prosecutes here for the said United States, in its behalf, in a cause of forfeiture, civil and maritime, in which the United States of America is concerned, and informs this Honorable Court:

That the United States of America brings suit herein against a certain vessel, the steamer C., her tackle, apparel, furniture, etc., and the cargo laden thereon, consisting of material, arms, ammunition, equipment of war and stores for breach of the neutrality laws of the said United States of America, and alleges:

First. That the said steamer is now lying in the port of New York, in public navigable waters of the United States within the Southern District of New York, and within the admiralty and maritime jurisdiction of the United States, and is ready to sail for certain places, to the said Attorney of the United States of America unknown, with the intent in the service of a district and people of Hayti, to wit, certain rebels, who are now in a state of insurrection against the organized and recognized Government of the Republic of Hayti, to cruise and commit hostilities against the subjects, citizens, and property of the Republic of Hayti, with which the United States of America is now at peace.

Second. That the said steamer on or about the 5th day of February, A. D. 18—, within the limits of the United States of America, and of the Southern District of New York, and within the jurisdiction of this Court,

was fitted out and armed by certain persons, to the said Attorney of the United States of America unknown, with the intent that said steamer should be employed in the service of a certain people and district of the Republic of Hayti, to wit, certain rebels, who are now in a state of insurrection against the organized and recognized Government of the Republic of Hayti, to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Third. That on or about the 5th day of February, 18—, within the Southern District of New York, and within the limits of the United States of America, and within the jurisdiction of this Court, certain persons, to said Attorney of the United States of America unknown, were knowingly concerned in the furnishing and fitting out of said steamer, with intent that said steamer should be employed in the service of a certain district and people foreign to the United States of America, in the Republic of Hayti, to wit, certain rebels, who are now and then were in a state of insurrection against the organized and recognized Government of the Republic of Hayti, to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Fourth. That the said steamer was, on or about the 5th day of February, A. D. 18—, within the limits of the United States of America, to wit, within the Southern District of New York aforesaid, furnished, fitted out and armed by certain persons, to the said Attorney of the United States of America unknown, with the intent, of which said unknown persons had knowledge, that said steamer should be employed in the service of a foreign people, to wit, a portion of the people of the Republic of Hayti, to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Fifth. That on or about the 5th day of February, A. D. 18—, within the limits of the United States of America, and within the Southern District of New York, certain persons to the said Attorney of the United States of America unknown, attempted to fit out and arm the said steamer, with intent that said steamer should be employed in the service of a foreign people, to wit, a portion of the people of the Republic of Hayti, to cruise and commit hostilities against the subjects, citizens and property of the Republic of Hayti, with which the United States of America then was and now is at peace.

Sixth. That all and singular the matters hereinbefore firstly, secondly, thirdly, fourthly and fifthly articulated are contrary to Section 5283 of the Revised Statutes of the United States of America. That by reason of the premises, and by virtue of the said section, the said steamer C., her tackle, apparel, furniture, etc., and the cargo laden thereon, consisting of materials, arms, ammunition, equipment of war and stores became forfeited.

That all and singular the premises aforesaid are and were true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

Wherefore the said Attorney of the United States on behalf of the said United States prays the usual process and monition of this Honorable Court against the said steamer C., and her tackle, apparel, furniture and materials, arms, ammunition, equipment of war and stores laden thereon in this behalf to be made, and that all persons concerned in interest in such vessel and her tackle, apparel, furniture, and in said materials, arms, ammunition, equipment of war and stores aforesaid may be cited to appear and show cause why a forfeiture of the same should not be decreed, and that all due proceedings being had thereon this Honorable Court may be pleased to decree for the forfeiture aforesaid, and that the said vessel the C., and her tackle, apparel, furniture and the materials, arms, ammunition, equipment of war and stores laden thereon may be condemned as forfeited according to the statutes and the acts of Congress in that behalf provided.

S. A. W., United States Attorney.

(Libels on behalf of the United States need not be verified.)

PRIZE—LIBEL AGAINST A VESSEL AND CARGO AS PRIZE.

(From Hall's Admiralty.)

To the Honorable John Sloss Hobart, Esquire, Judge of the District Court of the United States for the New York District.

The libel of Silas Talbot, Esquire, Commander of the United States ship-of-war, the Constitution, on behalf as well of the United States as of himself and the officers and crew of the said ship, against the ship Amelia, her tackle, apparel, furniture and cargo.

The said libellant for and on behalf as aforesaid, doth hereby propound, allege, and declare to this Honorable Court, as followeth:

First. That pursuant to instructions for that purpose from the President of the United States, the libellant in and with the said United States ship-of-war, the Constitution, and her officers and crew, did subdue, seize and take upon the high seas, the said ship or vessel called the Amelia, of the burthen of about 730 tons, with her apparel, guns, and appurtenances, and a valuable cargo on board of the same, consisting of cotton, sugar, and dry goods in bales, and hath brought the said ship or vessel and her cargo into the port of New York, where they now are.

Second. That the said ship or vessel called the Amelia, at the time of the said capture thereof, was armed with eight carriage guns, and was under the command of Citoyen Etienne Prevost, a French officer of marine, and had on board besides the said commander thereof, eleven French mariners; that as this libellant hath been informed, the said ship or vessel with her said cargo, being the property of some person or persons to the said libellant unknown, sailed some time since from Calcutta, an English port in the East Indies, bound for some port in Europe: That upon her

said voyage she was met with and captured as a prize by a French national corvette, called *La Dilligente*, commanded by L. T. Dubois, who took out of her the captain and crew of the said ship *Amelia* with all the papers relating to her and her cargo, and placed the said Etienne Prevost and the said French mariners on board of her, and ordered her to St. Domingo for adjudication, as a good and lawful prize; and that she remained in the full and peaceable possession of the French from the time of the capture thereof by them, for the space of ten days, whereby this libellant is advised that as well by the law of nations, as by the particular law of France, the said ship became and was to be considered as a French ship.

Third. This proponent doth allege, propound, and declare, that all and singular the premises are and were true, public and notorious, of which due proof being made, he humbly prays the usual process and monition of this court in this behalf to be made, and that the said Etienne Prevost, and all other persons having or claiming any interest in the said ship *Amelia*, her apparel, guns, appurtenances, and cargo, or any part thereof, may be cited in general and special, to answer the premises, and that right and justice may be duly administered in this behalf, and all due proceedings being had, that the said ship or vessel, her apparel, guns, appurtenances, and cargo, for the causes aforesaid, and others appearing, may, by the definitive sentence and decree of this Honorable Court be condemned as forfeited, to be distributed as by law is provided respecting the captures made by the public armed vessels of the United States; or if it shall appear that the same or any part or parcel thereof ought to be restored to any person or persons, as the former owner or owners thereof, then that the same may be so restored upon the payment of such salvage as by law ought to be paid for the same.

RICHARD HARRISON,
Proctor and Advocate for the Libellant.

**PRIZE—SHORT FORM OF THE SAME, DECIDED TO BE A PROPER FORM, IN THE
EMPRESS, BLATCHF. PR. CAS. 146.**

To the Honorable William Marvin, Judge of the District Court of the United States for the Southern District of Florida.

The libel of Thomas J. Boynton, attorney of the United States for the Southern District of Florida, who libels for the United States and for all parties in interest against the steamship or vessel called the *Circassian*, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That pursuant to instructions from the President of the United States, Earl English, of the United States navy, in and with the United States ship-of-war the *Somerset*, her officers and crew, did, on the fourth day of May, in the year of our Lord one thousand eight hundred and sixty-two, subdue, seize, and capture on the high seas, as prize of war, the said ship or vessel called the *Circassian*, with a valuable cargo on board of the same; and that the said ship and cargo have been brought into the port and harbor

of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court; and that the said vessel and cargo are lawful prize of war, and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel, and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined; and that, on proper proofs being taken and heard, and all due proceedings being had, the said vessel, the Circassian, together with her tackle, apparel, furniture, and cargo may, on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited and sold as prize of war.

THOMAS J. BOYNTON,
U. S. Attorney, S. D. of Florida.

PRIZE—LIBEL FOR RESTITUTION OF A CAPTURED SHIP AND CARGO.

(From Hall's Admiralty.)

To the Honorable Richard Peters, Judge of the District Court of Pennsylvania.

The libel of Robert Findley, and others against the ship William, and against Peter Joanene, in a cause of restitution of property captured as prize, alleges as follows:

First. That your libellants are the true owners of the ship William, James Leggat master, now lying in the port of Philadelphia, and within the jurisdiction of this Honorable Court.

Second. That on the third day of May last, the said ship being on her voyage from Bremen to Potomac River, in the State of Maryland, and within nine miles of the sea coast of the United States, received an American pilot on board for the purpose of conducting her safely up the Chesapeake Bay to the place of her destination, and after receiving the said pilot she continued on the same course until she had arrived within about two miles of Cape Henry, the southern promontory of Chesapeake Bay, in five fathom water, and as near the shore as the pilot thought it proper to go; when she was forcibly seized and taken into possession by a number of armed men under the command of Peter Joanene, captain of an armed schooner then coming out of Chesapeake Bay, called the Citizen Genet, and bearing the national colors of the Republic of France, as a prize to the said schooner, and hath since been detained and now is in the possession of the said Peter Joanene, who also then and there made prisoners of the captain, officers, and crew of the said ship William, and them as prisoners doth detain.

Third. That not admitting that the said schooner, the Citizen Genet, was duly commissioned and authorized to make prizes of vessels belonging to British subjects, which they pray may be inquired of, your libellants

humbly insist that according to the premises, the said ship William was, at the time of her being so taken, upon neutral ground, within the territorial jurisdiction and under the protection of the United States, who are now at peace with the king and people of Great Britain, and that the said Peter Joanene and the persons under his command had no permission or authority from or under the United States to capture British vessels within that distance from the sea coast, to which by the laws of nations and the laws of the United States, the right and jurisdiction of the United States extended.

Inasmuch, then, as the said capture and detention of the said ship William, and the captain, officers, and crew thereof, are manifestly unjust, and contrary to the laws of nations and the laws of the United States, your libellants humbly pray that the said ship William, her cargo, tackle, apparel, and furniture, and all other things belonging to her may, by the sentence and decree of this Honorable Court, be restored to your libellants. That the said captain, officers, and crew thereof may be relieved from imprisonment for the purpose of navigating her to her destined port, and that full satisfaction may be made by the said Peter Joanene and all others concerned, as well for the said unlawful capture and detention of the said ship, as for the imprisonment of the said captain, officers, and crew thereof, and all damages, charges, and expenses incurred thereby.

For which end your libellants humbly pray process of attachment, arrest, and monition, as in like cases is customary.

RAWLE
Proctor pro Libellant.

A SUPPLEMENTAL LIBEL.

To the District Court of the United States for the Southern District of New York.

The supplementary libel and complaint of the A. Trading Company against the steamship H., her engines, etc., and against all persons intervening for their interest therein, alleges as follows:

First. The libellant here repeats the allegations of its original libel, verified August 4, 19—, and filed in this court August 5, 19—, and refers again to the terms of the bill of lading annexed to said original libel.

Second. And the libellant avers that on receipt of the 216 packages of silk, mentioned in its original libel as all that were received out of its original shipment of 300 packages, the same were examined and found to be not in the same good order and condition as when shipped, but on the contrary, were stained with sea water, and were soiled and torn, and had thereby deteriorated in value to an amount which libellant is at present unable to state accurately, but which it believes will on an average amount to some ten dollars per package, or two thousand one hundred and sixty dollars in all. The said damage was not observed at the time of the receipt of the said packages, and at the time of the filing of the original libel was unknown to the libellant.

Wherefore the libellant, in addition to the claim set forth in its original libel of four thousand two hundred and sixty eight dollars for short delivery, claims the additional sum of two thousand one hundred and sixty dollars for damage to the cargo delivered, and prays that the said additional and supplementary claim may be added to and included in its original claim, and that the said steamship H., her engines, etc., may be condemned therefor in addition to the damages already claimed, and it further prays as in its original libel it has already prayed.

R. & L., Proctors for Libellant.

(Verification as in Form No. 1.)

MESNE PROCESS.

ATTACHMENT AND GENERAL MONITION AGAINST A SHIP AND CARGO IN REM.

Southern District of New York, ss.

The President of the United States of America to the Marshal of the Southern District of New York, Greeting:
 [L. S.] Whereas a libel hath been filed in the District Court of the United States for the Southern District of New York, on the 16th day of September, in the year of our Lord one thousand eight hundred and, by P. H., against the ship W., her tackle, apparel, and furniture, and cargo, in a cause of salvage, civil and maritime, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, etc., and cargo, may be cited in general and special, to answer the premises, and all proceedings being had that the said ship or vessel, her tackle, etc., and cargo, may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellants:

You are therefore hereby commanded to attach the said ship or vessel, her tackle, etc., and cargo, and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the first Tuesday of October, 18—, at 10:30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness, the Honorable S. R. B., Judge of the said court, at the city of

New York, in the Southern District of New York, this 16th day of September, in the year of our Lord one thousand eight hundred and —, and of our independence the—.

F. J. B., Clerk.

NOTICE FOR PUBLICATION CONTAINING THE SUBSTANCE OF THE LIBEL.

United States of America, Southern District of New York, ss.

Whereas a libel has been filed in the District Court of the United States for the Southern District of New York, on the sixteenth day of September, 18—, by P. H., against the ship W., her tackle, apparel, and furniture, and cargo, in a cause of salvage, civil and maritime, and praying process against said ship and cargo, and reasonable and proper salvage, and that the said ship, her tackle, apparel, and furniture, and cargo may be condemned and sold to pay such salvage, with costs, charges, and expenses:

Now, therefore, in pursuance of the monition under the seal of the said court to me directed and delivered, I do hereby give public notice to all persons claiming the said ship, her tackle, apparel, and furniture, and cargo, or in any manner interested therein, that they be and appear before the said District Court to be held at the city of New York in and for the Southern District of New York, on the first Tuesday of October, 18—, at 10: 30 o'clock in the forenoon of that day, (provided the same shall be a day of jurisdiction, otherwise, on the next day of jurisdiction thereafter), then and there to interpose their claims, and to make their allegations in that behalf.

Dated the 16th day of September, 18—.

T. M., U. S. Marshal.

THE MARSHAL'S RETURN TO THE FOREGOING WRIT.

Title of the cause.

In obedience to the within monition, I have attached the vessel and cargo therein described, on the sixteenth day of September, 18—, and I have given due notice to all persons claiming the same, that this court will, on the fifth day of October, 18— (if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated October 5, 18—.

T. M., U. S. Marshal.

WARRANT OF ARREST IN PERSONAM.

[L. S.]

The President of the United States of America, to the Marshal of the Southern District of New York, Greeting: Whereas, a libel has been filed in the District Court of the United States of America for the Southern District of New York, on the 14th day of November, in the year of our Lord, one thousand eight hundred and — by A. B. against C. D., in a certain action, civil and maritime, for assault therein alleged to have been committed upon the said libellant, and claiming five hundred dollars damages, and praying that a warrant of arrest may issue against the said defendant: Now, therefore, we do hereby empower and strictly charge and command you, the said marshal, that you take and arrest the said defendant, if he shall be found in your district, and him safely keep, so that you may have his body before the said District Court, on the 19th day of November 18—, at the Federal Building in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable A. B., Judge of said court, this 14th day of November, in the year of our Lord one thousand eight hundred and — and of our independence the —.

S. H. L., Clerk.

G. H., Proctor.

 MARK FOR BAIL.

The marshal will hold the respondent to bail in the sum of two hundred and fifty-two dollars.

Dated November 14, 18—.

S. H. L., Clerk.

 MARSHAL'S DEPUTATION TO HIS DEPUTY OR BAILIFF.

I hereby depute John Doe to execute the within process.

Dated November 14, 18—.

W. H., U. S. Marshal.

 MARSHAL'S RETURN.

Defendant taken, November 16, 1908.

W. H., U. S. Marshal.

CITATION WITH ORDER OF FOREIGN ATTACHMENT.

[L. S.] The President of the United States of America to the Marshal of the Southern District of New York, Greeting: Whereas a libel has been filed in the District Court of the United States of America, for the Southern District of New York, on the nineteenth day of May, in the year of our Lord 18—, by Thomas Gould, libellant, against John Gibbons, master of the ship Mount Vernon, in a certain action, civil and maritime, for certain assaults and batteries therein alleged to have been committed on the said libellant, to his damage of five hundred dollars, and praying that a citation may issue against the said defendant, pursuant to the rules and practice of this court, and that his goods and chattels and his credits and effects may be attached to compel his attendance in case he cannot be found; Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you warn the said defendant, if he shall be found in your district, to be before the said District Court of the United States, at the Federal Building in the city of New York, on the 23d day of May, 18—, at 10.30 o'clock, A. M., then and there to answer the said libel, and to make his allegations in that behalf; and if the said defendant cannot be found in your district, we further command you that you attach his goods and chattels in your district to the amount sued for, and if no goods and chattels can be found, that you attach his credits and effects to the amount sued for, in the hands of the garnishees, J. E. & Co., and that you summon the said garnishees to appear before the said District Court on the said twenty-third day of May, 18—, to do and abide what may be required of them in this behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable A. B., Judge of said court, this nineteenth day of May, in the year of our Lord 18—.

S. H. L., Clerk.

A. N., Proctor.

MARSHAL'S RETURN.

The defendant is not found in the district, and I have attached the following goods and chattels of said defendant, to wit (naming them)

OR:

The defendant is not found in this district, and I have attached credits and effects of the said defendant, in the hands of J. E. & Co., garnishees, and have summoned the said garnishees as within commanded.

Dated New York, May 20, 18—.

W. H., U. S. Marshal.

CITATION AND MONITION IN PERSONAM.

[L. S.] The President of the United States of America, to the Marshal of the Southern District of New York, Greeting: Whereas a libel has been filed in the District Court of the United States of America for the Southern District of New York, on the 14th day of January, in the year of our Lord one thousand eight hundred and — by A. B., against C. D., in a certain action, civil and maritime, for wages therein alleged to be due to the said libellant, amounting to seventy-five dollars, and praying that a citation may issue against the said respondent, pursuant to the rules and practice of this court:

Now, therefore, we do hereby empower, and strictly charge and command you, the said marshal, that you cite and admonish the said respondent, if he shall be found in your district, that he be and appear before the said District Court, on the 19th day of January, 18—, at 10.30 o'clock A. M., at the Federal Building in the city of New York, then and there to answer the said libel, and to make his allegations in that behalf; and have you then and there this writ, with your return thereon.

Witness the Honorable A. B., Judge of said court, this 14th day of January in the year of our Lord 18—.

S. H. L., Clerk.

E. F., Proctor.

 RETURN OF MARSHAL

Personally served, January 14, 18—.

W. H., U. S. Marshal.

 WARRANT OF ATTACHMENT AGAINST A SHIP, WITH A MONITION AGAINST THE MASTER OR OWNER.

Southern District of New York, ss.

[L. S.] The President of the United States of America, to the Marshal of the Southern District of New York, Greeting: Whereas a libel *in rem* hath been filed in the District Court of the United States for the Southern District of New York, on the 10th day of May in the year of our Lord 18—, by A. B., against the ship or vessel called the Rover, her tackle, etc., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, etc., may be cited to appear and answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, etc., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant: You are therefore hereby commanded, to attach the said ship

or vessel, her tackle, etc., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the 10th day of May at 10.30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf.

Witness the Honorable A. B., Judge of said court, this 1st day of May, 18—.

S. H. L., Clerk.

E. F., Proctor.

RETURN OF THE MARSHAL.

As within commanded, I attached the ship Rover, etc., therein described, on the 1st day of May, 18—, and I have given due notice to all persons claiming the same, that this court will on the 10th day of May, 18—, at 10 : 30 A. M., if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to the trial and condemnation thereof, should no claim be interposed for the same, and I have duly cited the respondent within named.

Dated New York, May 2, 18—.

U. S. Marshal.

WARRANT OF ATTACHMENT, WITH CITATION TO A SHIP MASTER AND OWNER.

Southern District of New York, ss.

The President of the United States of America, to the Marshal of the Southern District of New York, Greeting:

[L. S.] Whereas, a libel hath been filed in the District Court of the United States, for the Southern District of New York, on the twenty-third day of November, in the year of our Lord 18—, by Robert Gordon, against the ship Hilah, her tackle, apparel, and furniture, and against Edmund Hammond, master, and against Thomas E. Lyde, owner, for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship Hilah, her tackle, etc., may be cited in general and special, to answer the premises, and all proceedings being had, that the said ship Hilah, her tackle, etc., may for the causes in the said libel mentioned be condemned and sold to pay the demand of the libellant: You are therefore hereby commanded to attach the said ship Hilah, her tackle, etc., and to detain the same in your custody until the further orders of

the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held in and for the Southern District of New York, on the fourteenth day of December, 18—, at 10: 30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf; and you are hereby further empowered and commanded to cite and admonish the said Edmund Hammond and Thomas E. Lyde, if they shall be found in your district, that they appear before the said court, on the day herein above last mentioned, to answer the matters contained in the said libel, and to stand and abide such order and decree as may be made by the court in the premises. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable S. B., Judge of the said court, at the city of New York, this twenty-third day of November, 18—.

C. D. B., Clerk.

S. B., Proctor.

WARRANT OF ATTACHMENT, AND FOR CITATION, IN A CAUSE OF POSSESSION OR RESTITUTION.

Southern District of New York, ss.

The President of the United States of America, to the Marshal of the Southern District of New York, Greeting: Whereas, a libel *in rem* and *personam* hath been filed in
 [L. S.] the District Court of the United States, for the Southern District of New York, on the eighteenth day of August, in the year of our Lord one thousand eight hundred and —, by A. P., libellant, against the schooner L. S., her tackle, etc., and against J. S. and S. T., in an action, civil and maritime, for the recovery and delivery of the said ship to libellant, on account of the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said schooner or vessel, her tackle, etc., and in especial the said J. S. and S. T., may be cited to answer the premises and all proceedings being had, that the said schooner or vessel, her tackle, etc., may, for the causes in the said libel mentioned, be delivered to the libellant:

You are therefore hereby commanded, to attach the said schooner or vessel, her tackle, etc., and to detain the same in your custody, until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having any thing to say why the same should not be delivered to the libellant, pursuant to the prayer of the said libel, that they be and appear before the said court, to be held

in and for the Southern District of New York, on the first Tuesday of September, 18—, at 10: 30 o'clock in the forenoon of the same day, if the same shall be a day of jurisdiction, otherwise on the next day of Jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations in that behalf. And the libellant having prayed that the said J. S. and S. T., may be cited to appear before the said court, we do hereby further empower, and strictly charge and command you the said marshal, that you cite and admonish the said J. S. and S. T., if they shall be found in your district, that they and each of them appear before the said District Court, on the seventh day of September next, at the court room of the District Court in the city of New York, at 11 o'clock A. M., in the City of New York, then and there to answer the said libel, and to make their allegations in that behalf; and have you there and then this writ, with your return thereon.

Witness the Honorable S. R. B., Judge of said court, this nineteenth day of August, in the year of our Lord one thousand eight hundred and —, and of our independence the —.

J. W. M., Clerk.

RETURN OF THE MARSHAL.

Title of the cause.

As within commanded, I attached the schooner L. S., therein described, on the 20th day of August, 18—, and have given due notice to all persons claiming the same, that this court will, on the 7th day of September, 18—, if that day should be a day of jurisdiction, if not, on the next day of jurisdiction thereafter, proceed to the trial and condemnation thereof, should no claim be interposed for the same; and I have cited the defendant J. S., within named, and the defendant S. T., is not found in this district. Dated New York, August 21, 18—.

W. H., U. S. Marshal.

INTERLOCUTORY SALES.

AFFIDAVIT OF CIRCUMSTANCES TO MOVE FOR SALE OF SHIP AND CARGO.

District Court of the United States for the Southern District of New York.

JOHN KINGSBURY, as master, etc. }
 vs. }
 THE SHIP W., etc., and CARGO. }

Southern District of New York, ss.

John Kingsbury, being duly sworn, says that he is the libellant above named:—That the ship W., is now at the wharf in the port of New York, subject to large and increasing expense for wharfage, keeper's fees, and other expenses: that she is in a damaged condition, and requires care and

repairs: that a large portion of her cargo is perishable, being sugar, and in a wet and damaged condition: that the only claims that have been interposed are those of the United States for a forfeiture and for duties; of the British Consul, for the probable rights of unknown British owners, and of the agents of certain foreign underwriters for the contingent rights of such underwriters. That, in his opinion, the interests of all parties concerned will be promoted by a speedy judicial sale of said ship, her tackle, apparel, and furniture, and cargo, the proceeds of such sale to be brought into court for the benefit of whom it may concern, subject to the further order of the court.

JOHN KINGSBURY.

Sworn to before me,
this 7th October, 18—. }

NOTICE OF MOTION ON THE FOREGOING AFFIDAVIT.

District Court of the United States, Southern District of New York.

JOHN KINGSBURY
vs.
THE SHIP W. and CARGO. }

GENTLEMEN:—You will please take notice that, on the libel and claims and all proceedings in this cause, and on the affidavit of John Kingsbury, verified Oct. 4, 18—, of which the foregoing is a copy, a motion will be made before this court, in the Federal Building, in the city of New York, on Thursday, the 8th day of October, 18—, at 10:30 o'clock in the forenoon of that day, for an order, directing that the ship W. and her cargo above mentioned, be sold by the marshal of this district and the proceeds brought into court, and for such other and further order or relief as may be just.

Yours, etc.,

I. A. J., Proctor for Libellants.

New York, Oct. 4th, 18—.

To J. A. H., Esq., United States Attorney.

R. & B., Esqrs., Proctors for Underwriters, etc.

H. & E. W., Esqrs., Proctors for the British Consul.

ORDER FOR INTERLOCUTORY SALE OF A SHIP AND CARGO.

(For Caption, see p. 651.)

JOHN KINGSBURY
vs.
THE SHIP W., HER TACKLE, etc., and
CARGO. }

A motion having been duly brought on before this court for the interlocutory sale of the above named ship W. and her cargo, and for

other relief, now, on the libel, of the libellant and the various claims interposed herein, and on reading and filing the affidavit of John Kingsbury, and the notice of this motion with due proof of service thereof on the proctors for claimants, and on motion of I. A. J., Esq., proctor for the libellant, it is ordered, that the ship W., her tackle, apparel, and furniture, and cargo, be sold by the marshal, on six days' public notice, and that a *venditioni exponas* issue accordingly; and it is further ordered, that the marshal bring the proceeds of such sale into this court, and deposit the same with the clerk thereof.

A. B.,
United States District Judge.

STIPULATIONS.

LIBELLANT'S STIPULATION FOR COSTS.

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed in this court, on the 1st day of December in the year of our Lord 18—, by A. B., against the ship Rover, etc., for the reasons and causes in the said libel mentioned, and the said A. B., libellant above named, and C. D., residing at — St., New York, and by occupation merchant, and E. F., residing at — St., New York, and by occupation ship Chandler, sureties for the libellant, hereby consenting that in case of default or contumacy on the part of the libellant, execution for the sum of \$100 (or \$250) may issue against the parties hereto, their goods, chattels, and lands;

Now therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, hereby bound, in the sum of \$100 (or \$250), conditioned that the libellant above named shall pay all costs and expenses which shall be awarded against him by the final decree of this court, or upon an appeal, by the appellate court.

Taken and acknowledged, this 3d day
of December, 18—, before me, }

A. B.
C. D.
E. F.

Southern District of New York, ss.

C. D., and E. F., sureties and parties to the above stipulation, being duly sworn, each deposes and says that he resides as above set forth and that he is worth the sum of two [or five] hundred dollars over and above all his just debts and liabilities.

Sworn to this 3d day of
December, 18—, before me, }

RESPONDENT'S STIPULATION TO APPEAR AND PAY THE DECREE—GIVEN ON ATTACHMENT OF PROPERTY.

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed in this court, on the 8th day of June, 18—, by A. B. against C. D., for the reasons and causes in the said libel mentioned, and whereas, certain property of the respondent, to wit, the ship X. has been attached under process issued in pursuance of the prayer of the said libel, and the said C. D. respondent, and E. F. and G. H., merchants, his sureties, residing E. F. at — St., New York, and G. H. at — St., New York, hereby consenting and agreeing that, in case of default or contumacy on the part of the said respondent, execution may issue against their goods, chattels, and lands, for the sum of five thousand dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, bound in the sum of five thousand dollars, conditioned that the respondent above named shall appear in the suit and abide by all orders of the court, interlocutory or final, in the cause, and pay all damages awarded by the final decree rendered therein in this court, or in any appellate court.

Taken and acknowledged, this 10th day
of June, 18—, before me, }

C. D.
E. F.
G. H.

Southern District of New York, ss.

E. F. and G. H., parties to the above stipulation, being duly sworn, depose and say each for himself, that he resides as above set forth and that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

Sworn to this 10th day of
June, 18—, before me, }

E. F.
G. H.

CLAIMANT'S STIPULATION TO ABIDE BY AND PAY THE DECREE.

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed in this court, on the 8th day of June, 18—, by A. B. against the steamship Helen, etc, for the reasons and causes in the said libel mentioned, and whereas a claim to the said steamship has been filed by C. D., and the value of the said steamship has been fixed by consent, at the sum of ten thousand dollars for the purposes of this suit: and

the said claimant, and E. F. and G. H., merchants, his sureties, residing E. F. at — St., New York, and G. H. at — St., New York, hereby consenting and agreeing that, in case of default or contumacy on the part of the claimant, execution may issue against their goods, chattels, and lands, for the sum of ten thousand dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the stipulators undersigned are, and each of them is, bound in the sum of five thousand dollars, conditioned that the claimant above named shall abide by and pay the money awarded by the final decree rendered in the cause by this court, or in case of appeal, by the appellate court.

Taken and acknowledged, this 10th day of }
June, 18—, before me, }

C. D.
E. F.
G. H.

Southern District of New York, ss.

E. F. and G. H., parties to the above stipulation, being duly sworn, depose and say each for himself, that he resides as above set forth and that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

Sworn to this 10th day of }
June, 18—, before me, }

E. F.
G. H.

STIPULATION FOR VALUE.

District Court of the United States for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas a libel was filed on the 2d day of June, 18—, by A. B. against the bark Ormus, her tackle, apparel, and furniture, for the reasons and causes in the said libel mentioned; and Whereas, the issuing of process has been waived on the agreement of the owner of said bark to appear in said suit and file proper claim and stipulations: *Or,—*

[Whereas the vessel is now in the custody of the marshal of this district under process issued in accordance with the prayer of said libel;]

And whereas, a claim to said vessel has been filed by C. D. and others, and the value thereof has been fixed by consent at five thousand dollars, for the purpose of bonding, as appears by the said consent endorsed hereon, *Or,—*[and the value thereof has been fixed by appraisal at the sum of five thousand dollars, as appears by the report of the appraisers filed herewith]; and the parties hereto hereby consenting and agreeing that in case of default or contumacy on the party of the claimants, or their sureties, execution for the above agreed [or appraised] amount, with interest thereon from this date, may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such that if the claimants herein and E. F., residing at — Street, in the city of New York, and by occupation, merchant, and G. H., residing at — Street, in the city of New York, and by occupation, banker, the stipulators under-

signed, shall abide by all orders of the court, interlocutory or final, and pay the amount awarded by the final decree rendered by this court, or by any appellate court if an appeal intervene, with interest, then this stipulation shall be void, otherwise to remain in full force and virtue.

Taken and acknowledged, this
day of 189 , before me, }

C. D.
E. F.
G. H.

Southern District of New York, ss.

E. F. and G. H., parties to the above stipulation, being duly sworn, depose and say each for himself, that he resides as above set forth and that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

Sworn to this 10th day of
June, 18—, before me, }

E. F.
G. H.

RESPONDENT'S STIPULATION ON ARREST.

District Court of the United States of America, for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas, a libel has been filed in the District Court of the United States of America, for the Southern District of New York, on the first day of June, 18—, by James Johnson, libellant, against William Pratt, defendant, in a certain action, civil and maritime, for pilotage, therein alleged to be due and owing to the said libellant, amounting to fifty-six dollars, and the said defendant, and William Smith, merchant, residing at — W. 18th St., New York, and Charles Jones, residing at No. — South St., in the city of New York, ship chandler, sureties, parties hereto, consenting and agreeing that in case of default or contumacy on the part of the defendant, execution may issue against them, their goods, chattels and lands, for one hundred and fifty-six dollars,—

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the said defendant shall appear in the said suit before the said District Court of the United States of America, for the Southern District of New York, on the first Tuesday of June, instant, at 10: 30 o'clock in the forenoon, at the Federal Building, in the city of New York, and abide by all orders of the court, interlocutory or final, in the said cause, and pay the money awarded by the final decree rendered therein in the said court, or any appellate court.*

Taken and acknowledged, }
June 3, 18—, before me, }

WILLIAM PRATT.
WILLIAM SMITH.
CHARLES JONES.

R. M. S., U. S. Commissioner."

(Justification.)

* As to the latter clause, see *Stone v. Murphy*, 86 F. R. 158.

BOND TO THE MARSHAL ON ARREST OF THE PERSON.

Know all men by these presents, that we, C. D., as principal, and E. F., broker, residing at — St., New York, and G. H., adjuster, residing at — St., New York, as sureties, are held and firmly bound unto X. Y., Marshal of the Southern District of New York, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said X. Y., his successors, executors administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this 14th day of June, 18—.

Whereas, a libel has been filed in the District Court of the United States for the Southern District of New York on the 13th day of June, 18—, by A. B. against the above bounden C. D., in a certain suit, civil and maritime, wherein there is alleged to be due and owing to the said libellant damages amounting to twenty-five hundred dollars, and whereas, the said C. D. has been arrested by the marshal of this District under process issued pursuant to the prayer of the said libel: now therefore

The condition of this obligation is such, that if the above bounden C. D. shall appear in the said suit, before the said District Court of the United States for the Southern District of New York, on the 1st day of June, 18—, at the Federal Building in the city of New York, and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein,* in the said court, or in any appellate court, then the above obligation shall be void, otherwise to remain in full force and virtue.

Sealed and delivered in }
the presence of }

C. D.
E. F.
G. H.

(Justification.)

BOND TO THE MARSHAL ON ATTACHMENT OF PROPERTY.

Know all men by these presents, that we A. B., merchant, residing at — W. 10th St., New York, and C. D., broker, residing at — E. 19th St., New York, are held and firmly bound unto E. F., Marshal of the United States for the Southern District of New York, in the sum of [double the amount claimed in the libel], to be paid to the said E. F., marshal, etc., his successors, executors, administrators and assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 12th day of April, in the year of our Lord one thousand eight hundred and —

Whereas, a libel has been filed in the District Court of the United States for the Southern District of New York, on the 9th day of April, 18—, by

* As to this clause, see *Stone v. Murphy*, 88 F. R. 158.

signed, shall abide by all orders of the court, interlocutory or final, and pay the amount awarded by the final decree rendered by this court, or by any appellate court if an appeal intervene, with interest, then this stipulation shall be void, otherwise to remain in full force and virtue.

Taken and acknowledged, this
day of 189 , before me, }

C. D.
E. F.
G. H.

Southern District of New York, ss.

E. F. and G. H., parties to the above stipulation, being duly sworn, depose and say each for himself, that he resides as above set forth and that he is worth the sum of ten thousand dollars, over and above all his just debts and liabilities.

Sworn to this 10th day of
June, 18—, before me, }

E. F.
G. H.

RESPONDENT'S STIPULATION ON ARREST.

District Court of the United States of America, for the Southern District of New York.

STIPULATION ENTERED INTO PURSUANT TO THE RULES AND PRACTICE OF THIS COURT.

Whereas, a libel has been filed in the District Court of the United States of America, for the Southern District of New York, on the first day of June, 18—, by James Johnson, libellant, against William Pratt, defendant, in a certain action, civil and maritime, for pilotage, therein alleged to be due and owing to the said libellant, amounting to fifty-six dollars, and the said defendant, and William Smith, merchant, residing at — W. 18th St., New York, and Charles Jones, residing at No. — South St., in the city of New York, ship chandler, sureties, parties hereto, consenting and agreeing that in case of default or contumacy on the part of the defendant, execution may issue against them, their goods, chattels and lands, for one hundred and fifty-six dollars,—

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the said defendant shall appear in the said suit before the said District Court of the United States of America, for the Southern District of New York, on the first Tuesday of June, instant, at 10: 30 o'clock in the forenoon, at the Federal Building, in the city of New York, and abide by all orders of the court, interlocutory or final, in the said cause, and pay the money awarded by the final decree rendered therein in the said court, or any appellate court.*

Taken and acknowledged, }
June 3, 18—, before me, }

WILLIAM PRATT.
WILLIAM SMITH.
CHARLES JONES.

R. M. S., U. S. Commissioner."

(Justification.)

* As to the latter clause, see *Stone v. Murphy*, 86 F. R. 158.

BOND TO THE MARSHAL ON ARREST OF THE PERSON.

Know all men by these presents, that we, C. D., as principal, and E. F., broker, residing at — St., New York, and G. H., adjuster, residing at — St., New York, as sureties, are held and firmly bound unto X. Y., Marshal of the Southern District of New York, in the sum of five thousand dollars, lawful money of the United States of America, to be paid to the said X. Y., his successors, executors administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this 14th day of June, 18—.

Whereas, a libel has been filed in the District Court of the United States for the Southern District of New York on the 13th day of June, 18—, by A. B. against the above bounden C. D., in a certain suit, civil and maritime, wherein there is alleged to be due and owing to the said libellant damages amounting to twenty-five hundred dollars, and whereas, the said C. D. has been arrested by the marshal of this District under process issued pursuant to the prayer of the said libel: now therefore

The condition of this obligation is such, that if the above bounden C. D. shall appear in the said suit, before the said District Court of the United States for the Southern District of New York, on the 1st day of June, 18—, at the Federal Building in the city of New York, and abide by all orders of the court, interlocutory or final, in the cause, and pay the money awarded by the final decree rendered therein,* in the said court, or in any appellate court, then the above obligation shall be void, otherwise to remain in full force and virtue.

Sealed and delivered in }
the presence of }

C. D.
E. F.
G. H.

(Justification.)

BOND TO THE MARSHAL ON ATTACHMENT OF PROPERTY.

Know all men by these presents, that we A. B., merchant, residing at — W. 10th St., New York, and C. D., broker, residing at — E. 19th St., New York, are held and firmly bound unto E. F., Marshal of the United States for the Southern District of New York, in the sum of [double the amount claimed in the libel], to be paid to the said E. F., marshal, etc., his successors, executors, administrators and assigns, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the 12th day of April, in the year of our Lord one thousand eight hundred and —

Whereas, a libel has been filed in the District Court of the United States for the Southern District of New York, on the 9th day of April, 18—, by

* As to this clause, see *Stone v. Murphy*, 86 F. R. 158.

G. H., libellant, against the Brig L., her tackle, apparel and furniture, for the sum of _____ dollars, on which process of attachment has been issued, and the said brig, etc., is in the custody of the marshal under the said attachment, and M. N., claimant of said brig, has applied for a discharge of said brig from the custody of the marshal, and has filed a claim claiming the said brig as owner, and has filed a stipulation for the claimant's costs, pursuant to the rules and practice of the said court: Now, therefore, the condition of this obligation is such, that if the above bounden M. N., claimant, etc., shall abide by and perform the decree of this court, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

Sealed and delivered, and taken and acknowledged	}	A. B.
this 10th day of April, 18—, before me		C. D.

United States of America, Southern District of New York, ss.:

A. B. and C. D., being duly sworn, each deposes and says that he resides as above set forth and that he is worth the sum of [four times the amount claimed in the libel], over and above all his just debts and liabilities.

Sworn to this 10th day of	}	A. B.
April, 18—, before me		C. D.

STIPULATION FOR THE SAFE RETURN OF A VESSEL IN A SUIT BY A PART OWNER.

District Court of the United States for the Southern District of New York.

Whereas, a libel was filed in this court, on the _____ day of _____ in the year of our Lord one thousand eight hundred and _____ by A. B., owner of one-quarter of the ship or vessel called the Packet, her tackle, etc., against the said ship or vessel, her tackle, etc., for the reasons and causes in the said libel mentioned, and the interest of libellant in the said vessel, her tackle, etc., is of the value of _____ dollars, as appears by the consent [or appraisement] on file in said cause, and C. D., and E. F., the other owners of said vessel, and G. H., merchant, residing _____, and I. J., broker, residing _____, their sureties, parties hereto, hereby consenting and agreeing, that in case of default on the part of the said other owners or their sureties, execution may issue against their goods, chattels, and lands, for the sum of _____ dollars:

Now, therefore, it is hereby stipulated and agreed, that the stipulators undersigned are, and each of them is bound, in the sum of [double the value of libellant's share] dollars, conditioned that the said vessel shall safely return from her present intended voyage, to the port of New York.

Taken and acknowledged, this _____ day	}	C. D.
of _____ 18 , before me,		E. F.
U. S. Commissioner.		G. H.
		I. J.

(Justification.)

BOND FOR SAFE RETURN.

District Court of the United States for the Southern District of New York.

Know all men by these presents, that we, C. D., owner of three-fourths of the brig Packet, and E. F., residing at _____, and by occupation _____, and G. H., residing at _____, and by occupation _____ his sureties, are held and firmly bound unto A. B., in the sum of dollars (\$ _____), being double the appraised (or agreed) value of the interest of A. B. in the brig Packet, to the payment of which well and truly to be made, we hereby bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated at the city of New York, the day of _____, 190 .

Whereas, a libel has been heretofore, and on the _____ day of _____, 190 , filed in the District Court of the United States for the Southern District of New York, by A. B., the owner of one-quarter of the brig Packet, against the said brig, her tackle, etc., and against C. D., the owner of the other three-quarters of said brig, to obtain security for the safe return of the said brig from a proposed sealing voyage from the Port of New York to the Pacific Ocean, from which voyage the said A. B. dissents, upon which libel the said brig has been seized by the Marshal of the court, and is now in the custody of the court; and

Whereas, the value of the one-quarter of the said brig owned by the libellant, A. B., has been fixed by appraisement (or by agreement) at the sum of _____ dollars (\$ _____);

Now, therefore, the condition of this obligation is such that if the said brig shall safely return to her home port of Hudson, New York, from the proposed sealing voyage to the Pacific Ocean, or, in case of her loss or failure to so return, if C. D. above named, shall appear and abide by and perform the decree of the court, then this obligation shall be void, otherwise to remain in full force and virtue.

In witness whereof we have hereunto set our hands and seals the day of _____, 190 .

E. F.

G. H.

(Acknowledgment and Justification.)

STIPULATION IN POSSESSORY SUIT.

District Court of the United States for the Southern District of New York.

A libel having been heretofore filed in this Court, to wit, on the 9th day of August, 19—, by A. B., against the schooner C. and against D. F., the party at present in possession of the same, demanding possession of, and praying that this court will decree a delivery of the said vessel to the said libellant, and the said schooner C. being now in the custody of the Marshal of the District under process issued in accordance with the prayer of said libel;

And the said D. F. having duly appeared in the said suit, and having filed a claim to the schooner and an answer to the libel, and having shown special cause why he should be permitted to retain possession

of the said vessel until the hearing and decree of this court in the suit, to wit, that the calendar of this court is at present full; that the vessel is under a charter for Atlanta, Ga., is loaded and ready to sail, and that said claimant will be liable in damages if the vessel is prevented from fulfilling her said charter; and the court having thereupon made an order that the claimant may retain possession of said vessel until the hearing and determination of this suit, on his filing a bond or stipulation in the full value of the vessel, fixed at \$5,000, with sufficient surety, and conditioned that the said vessel shall at any time, on the order of the court, be returned to the jurisdiction of this court and to the custody of the Marshal of this District, without damage or waste, and unincumbered by liens, and in the same order and condition in which she now is, and that the claimant will abide by and perform all orders and decrees, interlocutory or final, of this court, or of any appellate court;

And the claimant herein, and G. H., merchant, residing at _____, New York City, and I. J., banker, residing at _____, New York City, sureties for claimant, hereby consenting and agreeing that in case of default or contumacy on the part of the claimant or his sureties, execution for the above amount of \$5,000 may issue against their goods, chattels and lands;

Now, therefore, it is hereby stipulated and agreed for the benefit of whom it may concern, that the claimant and the stipulators above named are and each of them is hereby bound in the sum of \$5,000, conditioned that the schooner C. shall at any time, on the order of this court, be returned to the jurisdiction of this court and to the custody of the Marshal of this District without damage or waste and unincumbered by liens, and in the same order and condition in which she now is, and that the claimant will abide by and perform all orders and decrees of this court, interlocutory or final, or of any appellate court.

Taken and acknowledged, this	day	}	G. H.
of August, 19 , before me.			D. F.
			I. J.

(Justification.)

STIPULATION IN LIMITATION OF LIABILITY PROCEEDING, see p. 691.

CONSENT TO TEMPORARY WITHHOLDING OF PROCESS.

District Court of the United States for the Southern District of New York.

JOHN JONES	}
vs.	
THE STEAMER EUREKA, HER ENGINE,	
TACKLE, etc.	

A libel having been filed in this cause, I hereby consent that no process issue thereon to arrest the said vessel, provided that, in the course

of this day, A. B., the owner thereof, file a claim, and with C. D., as surety, enter into the usual stipulations for costs and value, the latter in the sum of dollars, in the same manner as if the said vessel were arrested, and were to be discharged on stipulation. Publication to be waived and answer to be filed on otherwise default to be entered.

E. F., Proctor for Libellant.

CONSENT TO FIXING THE VALUE WITHOUT APPRAISEMENT, AND DISCHARGING
THE PROPERTY FROM CUSTODY.

Title of the cause.

I hereby consent that the value of the brig Rover, her tackle, apparel, and furniture, be fixed at six thousand dollars and that, on filing a claim and the necessary stipulations for costs and value, the latter in the sum of six thousand dollars, and on payment by claimant of all marshals and clerks' fees to date, the said brig be discharged from custody.

G. H., Proctor for Libellant.

CLAIMS.

CLAIM OF OWNER.

District Court of the United States for the Southern District of New York.

JOHN DOE
vs.
THE STEAMSHIP ARTEMIS, HER
ENGINES, ETC. }

And now, Richard Roe, owner of the steamship Artemis, her engines, etc., intervening for his own interest in the said steamship Artemis, etc., appears before this Honorable Court, and makes claim to the said steamship, her engines, etc., as the same are attached by the Marshal under process of this Court, at the instance of John Doe, and the said Richard Roe avers that he was in possession of the said steamship at the time of the attachment thereof, and that he is the true and *bona fide* owner of the said steamship and that no other person is the owner thereof. Wherefore he prays to defend accordingly.

RICHARD ROE.

Sworn to and subscribed this
day of A. D. 190 . }
before me
U. S. Commissioner.

CLAIM BY AN AGENT.

District Court of the United States for the Southern District of New York.

JOHN DOE
vs.
THE SHIP X, etc. }

And now before this Honorable Court, appears A. B., owner of the said ship X., by C. D., his agent and claims the above named ship X., and prays to defend this suit accordingly.

E. & F., Proctors for Claimant.

Southern District of New York, City and County of New York, ss:

C. D., being duly sworn, says that A. B., of Halifax, N. S., is the true and *bona fide* owner of the ship X., etc., against which this suit has been commenced by John Doe, libellant, and that no other person is the owner thereof; that for the purposes of this suit, deponent is agent of the owner, and is duly authorized by the said owner to put in this claim. And deponent further says that at the time of the commencement of this suit, the said ship X. etc., was in his possession, as agent, and that he is the lawful bailee thereof for the owner.

C. D.

Sworn to before me, , }
this 3d day of May 18—. }

CLAIM TO A PORTION OF THE CARGO.

United States District Court for the Southern District of New York

Title of the Cause.

To the District Court of the United States for the Southern District of New York.

The claim of David Jones, of the city of New York, merchant, to nine cases of merchandise marked D. J., 1 to 9, a portion of the cargo of the brig Roarer, now in custody of the marshal of this district at the suit of John Livingston and others, alleges as follows:

That claimant is the true and *bona fide* owner of said nine cases of merchandise, and that no other person is the owner thereof.

And thereupon the said claimant prays that this Honorable Court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

DAVID JONES.

Sworn to this 5th day of }
May 18—, before me, }

G. W. M., U. S. Commissioner.

**CLAIM BY A FOREIGN CONSUL FOR UNKNOWN OWNERS IN A CASE OF SALVAGE OF
A SHIP AND CARGO OF HIS NATION.**

District Court of the United States for the Southern District of New York.

Title of the Cause.

To the District Court of the United States for the Southern District of New York.

The claim of J. C. B., His Britannic Majesty's vice-consul in and for the city and State of New York and Eastern New Jersey, intervening for the interest of the owner or owners of the British ship W. and her cargo, as the same are libelled in this court by P. H., and others, in an alleged cause of salvages, avers as follows:

First. That the said ship W. is alleged in the said libel to be, and as the said claimant believes is, British property; upon information and belief he further avers that the cargo of merchandise alleged to have been found on board of the said ship, is in like manner British property:—And as such vice-consul, and in behalf of such British owners as may be entitled to the same, he claims the same as their property. Wherefore he prays that he may be allowed to defend accordingly.

Southern District of New York, ss.

J. C. B., being duly sworn, says that he is His Britannic Majesty's vice-consul in and for the city and State of New York and Eastern New Jersey, and that the foregoing claim is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn to, etc.

J. C. B.

CLAIM BY MASTER OF A PRIZE VESSEL.

United States District Court, Southern District of New York.

Title of the Cause.

And now comes Edward Hunter and says that he is the master of the said steamship *Circassian*, and as such is the lawful bailee of the said ship, her tackle, apparel, machinery, and furniture, and of her cargo, and he claims the same for the respective owners thereof.

And he further says that Zachariah C. Pearson, a British subject, residing in England, is the true and *bona fide* owner of the said steamship, and that no other person is the owner thereof, as appears by the register of said ship, and as he is informed and believes.

And he further says that he is informed and believes that the cargo of the said ship is owned by Leach, Harrison & Company, British merchants, having their house of trade in Liverpool, England, and by other persons residing in England and France, whose names are unknown to this deponent, and consists principally of wines, brandies, dry goods, sardines, oils, coffee, and tea, and was taken on board at Bordeaux, in France, and is consigned by bills of lading to several and different persons in Havana, Cuba.

That said bills of lading, together with manifests of said cargo and the British register of said ship, are now in the possession of the Honorable Court, as he is informed and believes, and he prays reference to the same for proofs herein.

And he further says that the said ship and the goods of her lading, at the time of shipment and capture, did belong to the persons hereinbefore named and referred to, as he is informed and verily believes, and that the same, if restored, will belong to the same persons and none others, as he has reason to believe and does believe.

And he prays restitution thereof.

Sworn to before me this 24th day
of May, 18— .

EDWARD HUNTER.

GEORGE D. ALLEN,
Clerk U. S. District Court.

RULE 59.

PETITION TO BRING IN THIRD PARTY UNDER RULE 59.

To the District Court of the United States for the Southern District of New York.

The petition of the S. P. Company respectfully shows to the court:

First. That the petitioner is a corporation, duly organized and existing under the laws of the State of Kentucky, and is and was at the times hereinafter mentioned the lessee in possession of the steamship Morgan City.

Second. On or about the 23d day of September 18—, a libel was filed in this court by one Frank Theall against the steamship Morgan City, claiming to recover for damages to the F. A. Pierce and E. S. Beeman, two canal boats belonging to him, by reason of a collision which occurred between said steamship and said canal boats on the 17th day of September, 18—.

Third. The facts and circumstances of the said collision were as follows:

(Set them forth as in a libel.)

Fourth. Petitioner further avers that at the time of the said collision, the said canal boats were in charge of the steamtug Pocahontas, and that the collision was wholly or partly caused by the fault and negligence of those in charge of the said steamtug, in allowing her large tow to occupy such a position in the river, in being too close to the New York shore, in not keeping her tow straight, in not starting up and straightening her tow on the approach of the Morgan City, in allowing it to drift down the stream with the ebb tide, in not giving alarm whistles, and in such other and further particulars as your petitioner may be able to show on the trial of the said suit; and that the said steamtug Pocahontas is a necessary and proper party to this litigation, and ought to be proceeded against herein.

Fifth. Petitioner files herewith its answer to the libel and a proper stipulation with sufficient surety to pay to the libellant and to any claimant or new party brought into this suit, by virtue of the process herein prayed for, all such costs, damages and expenses as shall be awarded against the petitioner by this court upon its final decree, whether rendered in the original or appellate court.

All and singular the premises are true, and the steamtug Pocahontas is now within the jurisdiction of this Honorable Court.

Wherefore, petitioner prays that process in due form of law may issue against the said steamtug Pocahontas, her engines, etc., and that all persons interested therein may be cited to appear and answer on oath this petition and the libel herein; and that this court will dismiss the libel of the libellant against the said steamship Morgan City, and will hold the steamtug Pocahontas solely liable for the said collision, or will make such other or further order or decree as to law and justice may appertain.

C. H. T., Proctor for Petitioner,

R. D. B., Advocate.

(Verification as in Form No. 1.)

ANSWERS.

ANSWERS BY THE AGENTS OF FOREIGN UNDERWRITERS TO VESSEL AND CARGO, IN CASE OF SALVAGE OF A FOREIGN SHIP.

To the District Court of the United States for the Southern District of New York.

The answer of H. B., of the city of New York, intervening as agent for the interest of his principals to the libel of P. H. against the ship W., her tackle, etc., in an alleged cause of salvage against said ship, alleges as follows:

First. That he is the duly authorized and accredited agent, at the port of New York, of certain foreign underwriters and insurance companies, to wit, the Sea Insurance Company, of Liverpool, England, the Ocean Fire and Marine Insurance Company, of Glasgow, Scotland, and the Associated Society of Underwriters, of London, England, which companies and underwriters, as the respondent above named is duly informed and verily believes, had heretofore duly accepted certain risks, and issued certain policies of insurance on the hull of the ship W., and on her cargo as the same are proceeded against in this suit.

Second. And further answering the libel herein, this respondent avers that he has no knowledge, or information sufficient to form a belief, as to the allegations of the first, second and third articles of the libel, which set forth an alleged salvage service rendered to the said ship W., and her cargo by the libellant above named: he therefore neither admits nor denies the same, but leaves the allegations thereof to be proven by the said libellant as he may be able so to do and as he may be advised.

Third. And further answering, respondent avers that, upon the arrival of the said ship W. and her cargo in this port, in tow of the steamship Merced, as alleged in the libel, respondent took possession of the same, for the benefit of his principals and of whom it might concern, and entered the cargo at the custom house and paid the duties thereon, which amounted to the sum of five thousand two hundred and fifty dollars, and also paid certain custom house charges, amounting to four hundred and fifty-six dollars, and paid certain wharfage charges and certain ship keeper's charges for the ship herself, which amount to the sum of three hundred and ninety-six dollars and eighty-five cents.

Wherefore this respondent prays, on behalf of his said principals, to wit, the said underwriters and insurances companies named above, and on behalf of himself, that this court will order a sale of the said vessel and her cargo, as prayed in the libel, and that, out of the proceeds of the sale of the said vessel and cargo, if sold, this court will, in the first place, order the said amount of duties and charges paid by this respondent to be repaid to the respondent, and that this Court, after hearing proof and decreeing a reasonable salvage, should it seem proper so to do, will further decree, that the rest, residue, and remainder of the said ship and her cargo, or of the proceeds thereof, should the same be decreed to be sold, after payment of said amount of duties and charges, and of the salvage, may be retained in the custody of this Court, for such reasonable time as may seem proper until the rights and interests of the above-mentioned insurance companies and underwriters may be ascertained; and that this Court will further decree, that the said ship and cargo, or the proceeds thereof, or a part thereof, as proof may be made of interest, may thereafter be delivered up to this respondent, upon due proof being made in manner and form as this Court may direct.

R. & B., Proctors for Claimants.

B., Advocate.

(*Verification.*)

ANSWER OF A GARNISHEE DENYING THE POSSESSION OF GOODS OR CREDITS.

To the District Court of the United States for the Southern District of New York.

The answer of J. W. E., garnishee, to the libel and complaint of Thomas Gould against John Given, in a cause of damage, civil and maritime, alleges as follows:

That it is not true that this respondent held, at the time of the service of the process in this suit, or at any time since, any goods, chattels, choses in action, property, credits, or effects in his hands or under his control, belonging to the said John Given, or in which he has any interest.

Wherefore this respondent prays that he may be hence dismissed, and that his costs and expenses may be decreed to him.

A. B., Proctor, etc.

(*Verification as in Form No. 1.*)

EXCEPTIONS.

A PEREMPTORY EXCEPTION TO A LIBEL.

To the District Court of the United States for the Southern District of New York.

The exception of A. B., claimant of the schooner Swallow, to the libel and complaint of John Dow against said schooner, alleges as follows:

That it appears from the libel that the damages claimed by the libellant, arose from the breaking of libellant's pier or dock by the schooner Swallow, which ran into and upon the same, and that the cause of action so set forth is not an admiralty and maritime cause of action and is not within the jurisdiction of this Honorable Court.

Dated New York, Feb. 1, 18—.

E. F.

Proctor for Claimant.

A DILATORY EXCEPTION TO A LIBEL.

To the District Court of the United States for the Southern District of New York.

The exception of A. B. to the libel and complaint of C. D. against the said A. B. alleges that the said libel is insufficient to the following particulars:

First. It is not signed by the libellant, nor by any proctor of this court.

Second. It does not state that the libellant has sustained any damages by reason of the matters and things alleged in the libel, nor that the respondent is indebted to the libellant in any sum.

Third. The third article thereof is scandalous and impertinent.

Wherefore the respondent prays that the libel may be dismissed with costs.

L. M., Proctor for Respondent.

EXCEPTIONS TO AN ANSWER FOR SCANDAL AND IMPERTINENCE.

District Court of the United States for the Southern District of New York.

EBENEZER N. HINCKLEY }
vs. }
DAVID H. ROBERTSON. }

The libellant above named hereby excepts to the answer of David H. Robertson, respondent in this cause, as follows:

First. That the allegation in the second article of said answer as fol-

lows, to wit, "That respondent is informed and believes the libellant's neglect of duty was notorious at Antwerp at the time, and respondent was constantly informed of the same by persons subsequently arriving from that place," is scandalous and impertinent.

Second. That the allegation in the third article of said answer, in the words following, to wit: "That, as the respondent is informed and believes, at the time the *Majestic* was loading at Newport, the agent of the cargo, before a notary public, protested against the libellant's incapacity and negligence," is impertinent.

Third. That the further allegation in the third article of said answer, in the words following, to wit: "That the vessels owned by respondent, which sailed with the same orders as libellant's, and were at Antwerp at the same time, made good voyages, and arrived at this port in the spring of the year, and have since proceeded on other voyages," is impertinent.

In which particulars the libellant insists that the respondent's said answer is irrelevant, impertinent, and scandalous; wherefore the libellant excepts thereto, and prays that the allegations of said answer excepted to as aforesaid may be expunged with costs.

B. & B., Proctors for Libellant.

EXCEPTIONS TO AN ANSWER FOR INSUFFICIENCY.

District Court of the United States for the Southern District of New York.

RAMON DE ZALDO

vs.

THE BRIG ALDEBARAN, HER TACKLE,
ETC., AND EBENEZER WHEELRIGHT.

The libellant hereby excepts to the answer of Ebenezer Wheelright, respondent, as follows:

First. The said respondent has not well and sufficiently answered and set forth whether the agent of the libellant made and entered into an agreement with George C. Prior, master of said brig, as is alleged by the libellant's libel on file, in article 4th.

Second. The said respondent has not well and sufficiently answered and set forth whether, in pursuance of the last mentioned agreement, the said brig set sail from Cienfuegos to Havana, as is alleged in the libellant's libel, on file, in article 5th.

In all which particulars the said answer of the said respondent is imperfect, insufficient, and evasive, and the libellant therefore excepts thereto, and prays that the said respondent may be compelled to file a further answer to the said libel.

J. B. P., Proctor for the Libellant.

EXCEPTIONS TO INTERROGATORIES TO A PARTY OR GARNISHEE.

District Court of the United States for the Southern District of New York.

A. B. }
 vs. }
 C. D. }

Exceptions to the interrogatories addressed to the libellant [or defendant, or E. F., garnishee.]

First. The said libellant [or defendant, or garnishee] hereby excepts to the fourth interrogatory, for the reason that the answer thereto may expose him to a prosecution for a penalty, and he is not by law obliged to answer the same.

Second. He excepts to the seventh interrogatory, for the reason that it only inquires in relation to hearsay and the declarations of third persons, which are not competent evidence.

E. F., Proctor for Libellants, etc.

EXCEPTIONS TO ANSWERS OF A PARTY OR GARNISHEE TO INTERROGATORIES.

District Court of the United States for the Southern District of New York.

A. B. }
 vs. }
 C. D. }

Exceptions to the answers of the libellant [or the defendant, or E. F., garnishee] to the interrogatories addressed to him.

First. The defendant [or libellant, or garnishee] excepts to the answer to the first interrogatory, for the reason that instead of answering the interrogatory, fully, directly, and positively, it answers the same evasively and indirectly, so far as it does answer the same, and omits wholly to answer how long the said defendant was confined in irons in the hold of said brig.

Second. He excepts to the answer to the fifth interrogatory, for the reason that said answer is impertinent and scandalous.

E. F., Proctor for Respondent, etc.

EXCEPTIONS BY A DEFENDANT TO THE REPORT OF A COMMISSIONER.

United States District Court. Southern District of New York.

R. DE Z. }
 vs. }
 E. B. }

The respondent hereby excepts to the report of the commissioner made herein, and by him this day filed, for the following causes, that is to say—

First. Because the said commissioner hath not in his said report allowed

as a credit to him, the said respondent, the sum of twenty-five hundred dollars, duly paid to A. L. Farnham, by him the said respondent, as appears by the testimony taken in this cause, on pp. 103, 104, 107, 109, 110 and 125.

Second. Because the said commissioner has not, in his said report, allowed as a credit to him, the said respondent, the sum of one hundred and six dollars and seventy-five cents, duly paid to A. L. Farnham, by the agent and consignee of this respondent, at Havana, in the island of Cuba, as appears by the like testimony, on pp. 47 and 48.

March 5th, 18—.

E. L., Proctor for Respondent.

EVIDENCE.

NOTICE OF TAKING DEPOSITIONS DE BENE ESSE.

District Court of the United States for the Southern District of New York.

P. H.	}	Notice.
vs.		
THE STEAMSHIP A., HER ENGINES, ETC.		

SIRS:

Please take notice, that William N. Winnett, Caleb L. Upshur, James Porter, William Dyer, John Stevens, James Jamison, and William Grant, witnesses on behalf of the libellant herein, whose testimony is necessary in this cause, and who are bound on a voyage to sea, (or, who are about to go out of the United States, or, who are about to go out of the district in which this case is to be tried, and to a greater distance than 100 miles from the place of trial, before the time of trial, or, who are ancient and infirm,) will be examined *de bene esse* on the part of the libellant in this cause, before E. C. B., a commissioner duly appointed by the District Court of the United States for the Southern District of New York, at his office, No. — Pine Street, in the city of New York, on the eight day of October, 18—, at nine o'clock in the forenoon, at which time and place you are hereby notified to be present, and put interrogatories, if you shall think fit.

Dated New York, the 7th day of October, 18—.

Yours, etc.,

A. J., Libellant's Proctor.

To A. H., Esq.,

R. & B., Esqrs.,

Proctors for Claimants.

SUBPŒNA TO TESTIFY BEFORE A COMMISSIONER.

[L. S.]

The President of the United States of America, to William N. Winnett, Caleb L. Upshur, William Jackson, James Porter, William Dyer, John Stevens, James Jamison, William Grant, Felix Martinez, Joseph Domingues, and Nicholas Yanino, Greeting: We command you, that all and singular business and excuses being laid aside, you and each of you be and appear in your proper persons, before E. C. B., a commissioner appointed by the District Court of the United States of America for the Southern District of New York, at his office, No. — Pine Street, in the city of New York, in the said Southern District of New York, on the eighth day of October, one thousand eight hundred and —, at nine o'clock in the forenoon of the said day, to testify all and singular what you and each of you may know in a certain cause now depending undetermined in the District Court of the United States, for the Southern District of New York, wherein P. H. is libellant against the steamship A., etc., on the part of the libellants. And this you or either of you are not to omit, under the penalty upon each and every of you of two hundred and fifty dollars.

Witness, A. B., Esq., Judge of the District Court of the United States, at the city of New York, the seventh day of October, in the year of our Lord one thousand eight hundred and —.

S. L., Clerk.

A. J., Libellants' Proctor.

SUBPŒNA TICKET.

By virtue of a writ of subpœna, to you directed and herewith shown, you are commanded, and firmly enjoined, that, laying all other matters aside, and notwithstanding any excuse, you be and appear in your proper person, before E. C. B., a commissioner duly appointed by the District Court of the United States of America, for the Southern District of New York, at his office, No. — Pine Street, in the city of New York, on the eighth day of October, 18—, at nine o'clock in the forenoon of the same day, to testify all and everything which you may know in a certain cause now depending in the District Court of the United States for the Southern District of New York, wherein P. H., is libellant against the steamship W., her engines, etc., on the part of the libellant. And this you are not to omit, under the penalty of two hundred and fifty dollars.

Dated this seventh day of October, 18—.

By the Court.

A. J., Proctor for Libellants.

DEPOSITION ON ORAL EXAMINATION.

*United States of America.**Southern District of New York, City, County, and State of New York, ss.**Title of the cause.*

BE IT KNOWN, that on this eighth day of October, in the year of our Lord 18—, before me, E. C. B., a commissioner duly appointed by the District Court of the United States for the Southern District of New York, and duly authorized under and by virtue of the acts of Congress, to take depositions in civil causes depending in the courts of the United States, personally appeared, William N. Winnett, Caleb L. Upshur, William Jackson, James Porter, William Dyer, John Stevens, James Jamison, and William Grant, witnesses on the part of the libellants in a certain civil cause of admiralty and maritime jurisdiction, now depending and undetermined in the District Court of the United States, for the Southern District of New York, wherein A. B. and C. D., are libellants against the ship G., her tackle, apparel, and furniture. And the said William N. Winnett having been by me first cautioned and sworn to testify to the truth, the whole truth, and nothing but the truth, did thereupon depose and say—That he is twenty-five years old; that he was chief mate of the brig M., on her late voyage from Havana to New York, etc., etc.

Examination closed for this day; adjourned till Oct. 9th, 18—, at 9 A. M.

Oct. 9th. The parties appearing the examination of the witness was continued as follows:—"The wreck, when we took possession of her, was two planks lower in the water forward than when they first fell in with her and boarded her," etc., etc.

WM. N. WINNETT.

Taken, subscribed, and sworn, Oct. }
 9th, 18—, before me, }
 E. C. B., U. S. Commissioner.

And the said Caleb L. Upshur, having been by me, etc., etc. And so on with the other witnesses.

CERTIFICATE OF COMMISSIONER OR NOTARY PUBLIC.

*United States of America.**Southern District of New York, ss.*

I, W. D. J., a public notary duly appointed in and for the County of Kings and State of New York, with certificate filed in the County of New York, duly authorized under and by virtue of the acts of Congress of the United States, and of the Revised Statutes of the United States, to take depositions, affidavits and bail in civil causes depending in the courts of the United States, do hereby certify, that the reason for taking the fore-

going depositions is, and the fact is, that the testimony of the witnesses, John Doe and Richard Roe, is material and necessary in the cause in the caption of the said depositions named, and that they are bound on a voyage to sea, and more than 100 miles from the place of trial before the time of trial.

I further certify, that due notification of the time and place of taking the said depositions was served upon Brown & Smith, proctors for claimants, requiring them to be present at the taking of the deposition and to put interrogatories, if they might think fit, of which notice a copy is hereto annexed, with due proof of service on said proctors; and that on the 1st day of May, 18—, I was attended by Charles Smith, Esq., of said firm of Brown & Smith, and by the witnesses and I further certify that such witnesses were of sound mind and lawful age, and were by me first carefully examined and cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, and the depositions were by me reduced to writing, in the presence of the witnesses, and from their statements, and that, after carefully reading the same to the witnesses, they subscribed the same in my presence. I have retained the said depositions in my possession for the purpose of forwarding the same with my own hand to S. H. L., Esq., Clerk of the United States District Court for the Southern District of New York, the court for which the same are taken.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal, this 4th day of May, in the year of our Lord 18—.

[SEAL.]

W. D. J.,
Notary Proctor for Kings Co.,
Cert. filed N. Y. Co.

COMMISSION TO EXAMINE WITNESSES, OR DEDIMUS POTESTATEM.

[L. S.] The President of the United States of America, to J. S., Esq., of Baltimore, Greeting: Know you, that we, in confidence of your prudence and fidelity, have appointed you, and by these presents do give you, full power and authority to examine Cornelius F. Driscoll, now or lately the master of the brig O., of Baltimore, as a witness in a certain cause depending in the District Court of the United States, for the Southern District of New York, wherein A. B. and C. D., are libellants, against the ship G., her tackle, etc., on the part of the said libellants, and you are hereby commanded and directed to examine the said witness on oath upon the interrogatories annexed to this commission, and to reduce his evidence to writing, and to return the same, annexed to this commission, and closed up under your seal unto the said court, with all convenient speed.

Witness, S. R. B., judge of the said court, at the Southern District of New York, this sixth day of November, in the year of our Lord 18—, and of our independence the ———

F. J. B., Clerk.

THE RETURN OF THE COMMISSIONER, ENDORSED ON THE COMMISSION.

The execution of this commission appears in certain schedules hereto annexed.

JOHN SCOTT, Commissioner.

COMMISSION—DIRECT INTERROGATORIES.

United States District Court for the Southern District of New York.

Interrogatories to be administered to Cornelius F. Driscoll, of Baltimore, in the State of Maryland, a witness to be produced, sworn, and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States, in and for the Southern District of New York, wherein A. B. and C. D. are libellants, against the ship G., her tackle, etc., on the part and behalf of the libellants.

First Interrogatory.—What is your name, age, place of residence, and business or profession?

Second Interrogatory.—Were you, or were you not, master of the brig O., on a voyage from Porto Cabello to Baltimore, in the month of August, 18—. If yea, at what time did you sail from Porto Cabello and when did you arrive at Baltimore?

Third Interrogatory.—Did you or did you not during the voyage aforesaid, fall in with the wreck of the ship G., of London?

Fourth Interrogatory.—Did or did not, etc., etc.

Tenth Interrogatory.—Do you know of any other matter or thing material or necessary, or that may tend to the benefit and advantage of the libellants in this cause? If yea, state the same as fully and particularly as if you were thereunto specially interrogated.

I. A. J., Proctor for Libellants.

COMMISSION—CROSS INTERROGATORIES.

District Court of the United States in and for the Southern District of New York.

Cross Interrogatories to be administered to Cornelius F. Driscoll, a witness to be produced, sworn and examined in a certain cause of admiralty and maritime jurisdiction, now pending in the District Court of the United States in and for the Southern District of New York, wherein A. B. and C. D., are libellants, against the ship G., on the part and behalf of the claimant of said ship.

First. If in answer to the third direct interrogatory, you answer, that you did, in August last, fall in at sea with the wreck of the ship G., state particularly, clearly, and explicitly, the condition in which the said ship G. was, when you fell in with her, etc., etc.

Last Interrogatory.—If you know any other matter or thing of benefit to the claimant, state the same as fully as if you had been particularly interrogated in regard thereto.

J. A. H., Proctor for Claimant.

DEPOSITION ON INTERROGATORIES.

Title of the Cause.

Deposition of witnesses produced, sworn, and examined on the thirteenth day of November, in the year of our Lord 18—, by virtue of a commission issued out of the District Court of the United States for the Southern District of New York, to me, the undersigned commissioner directed, for the examination of Cornelius N. Driscoll, a witness for the libellants in a certain cause there depending and at issue, wherein A. B. and C. D., are libellants against the ship G., her tackle, etc.:

Cornelius F. Driscoll, of the city of Baltimore, being produced, sworn, and examined, doth depose as follows:

First. To the first interrogatory, he saith—etc., etc.

Tenth. To the tenth interrogatory, he answers—That he does not recollect any other matter or thing material or necessary, or that may tend to the benefit and advantage of the libellants in this cause, except that, in his judgment, the said wreck, when left by deponent, was in a most shocking and desperate condition.

Cross Interrogatories.

First. To the first cross interrogatory, he saith—etc., etc.

Last. To the last cross interrogatory, he answers, that he knows nothing else material or necessary to the claimant.

C. F. DRISCOLL.

Sworn and subscribed before

J. S., Commissioner.

NOTICE OF MOTION TO SUPPRESS DEPOSITION.

United States District Court, Southern District of New York.

JOHN DOE
vs.
BARK HELEN. }

SIR:—Please take notice that we shall move this court at the court

room in the Federal Building, in the city of New York, on the 5th day of June, 18—, at 10: 30 o'clock A. M., or as soon thereafter as counsel can be heard, for an order suppressing the deposition of L. S., taken on behalf of the libellant herein, at the city of Chicago, on the 20th day of May, 18—, on the following grounds:

First. It was not sealed up nor kept by the magistrate, nor delivered by him into court, according to law, but the contrary appears.

Second. It is without date or jurat.

Third. It is not accompanied by the proper certificate of the commissioner.

Fourth. The witness was not properly cautioned and sworn.

Fifth. There is no evidence of the reasons for taking the deposition, or of the facts that rendered it proper or necessary to take it.

Sixth. It is impossible to tell which deposition the certificate of the commissioner refers to.

Seventh. The certificate appears not to have been given at the time of the taking of the deposition, but a long period afterwards; and it does not appear whether the facts certified relate to the time of the taking the one deposition or the other, or of the certificate.

Eighth. Reasonable notice of the time and place of taking the deposition was not served upon proctors for claimant.

Yours, etc.,

A. B., Proctor for Claimant.

To C. D., Esq., Proctor for libellant.

INTERROGATORIES PROPOUNDED TO A PARTY.

(Interrogatories are annexed to a pleading, therefore let them follow immediately after the signatures and jurat to the pleading, with the following caption:)

Interrogatories propounded to the defendant [or the libellant], which he is required to answer in writing, under oath.

First Interrogatory. What was the date of the arrival of the said ship M. Howes, at Londonderry? And when did she arrive at the usual place of discharge in said port?

Second. How soon after the arrival of said ship at such port, did the master notify the consignees of said ship of his arrival?

Third. How soon after such arrival was the discharge of the cargo commenced? Why was it not commenced sooner? When was the vessel fully discharged? On what days was any part of the cargo discharged? How much was discharged on each of those days respectively? During how many days, or parts thereof, was the weather so stormy or bad as to render the cargo liable to damage, if delivered? When did the vessel leave the said port, on her return voyage? Why did she not leave sooner?

Fourth. Was not a part of the cargo in a damaged state on arrival, and

if yea, how much? Were not two hundred bushels of corn and upwards, so damaged? Was not such damage owing to the master or persons in charge of her, having stowed the quantity so damaged in bulk, instead of in bags, as required by the agreement between the libellants and defendants, and by the bill of lading?

Fifth. Were there not some disputes between the said consignees and the said master in relation to said damaged cargo and the freight, and if yea, were not the disputes submitted to arbitration? What were the subjects which were submitted to arbitration, and what was the award?

Sixth. Where was the master of said vessel when she was ready for sea, and if he was not at Londonderry, how soon after she was ready for sea did he return to Londonderry? Was the said master at Londonderry each and every day from the time said vessel arrived at said port, till she left on her return voyage? And if you answer in the negative, state particularly on what day or days, and what parts thereof, he was absent during the said time.

Seventh. Were you not aware, at the time the agreement to him was made, that the defendants were acting as agents, and who they were acting for, and that the defendants were not the principals in the charter.

S. L. M., Proctor for Defendants.

New York, June 26, 18—.

ANSWERS BY A PARTY TO INTERROGATORIES.

District Court of the United States, for the Southern District of New York.

A. B. }
 vs. }
 C. D. }

Answers of A. B., libellant [or of C. D., defendant], to the interrogatories propounded to him in this cause.

To the first interrogatory, he says, etc., etc.

(The answer must be signed by the party answering, and be sworn to as follows:)

Southern District of New York, ss.:

A. B., the foregoing respondent, being sworn, says—That the foregoing answers to interrogatories subscribed by him are true.

A. B.

Sworn to January 4, 18—, before me,

G. W. M., U. S. Commissioner.

INTERROGATORIES TO BE PROPOUNDED TO A GARNISHEE.

Court and Title of the Cause.

Interrogatories to be propounded to J. W. E., garnishee in the libel of Thomas Gould against John Given.

First Interrogatory.—What is your name, place of residence, and occupation?

Second Interrogatory.—Do you know the defendant, John Given, and how long have you known him, and what has been his occupation since you first knew him?

Third Interrogatory.—Have you not, during your acquaintance with him, been his consignee, merchant, and agent in the city of New York, and has he not deposited in your hands, from time to time, sums of money, freights, and passage money belonging to him? State the same fully and particularly.

Fourth Interrogatory.—Did he not leave in your hands, on a previous voyage, a sum of money as security to you, for your liability for him as bail, and is not the same still in your hands?

Fifth Interrogatory.—Did he not leave in your hands this present voyage, his chronometer, and other nautical instruments for safe keeping, while he remained in port, and were they not, or some of the same in your possession at the time of the service of the process in this cause upon you?

Sixth Interrogatory.—Have you not in your possession, or under your control, some other property, goods, chattels, or funds, belonging to the said John Given? State fully and particularly what property, goods, chattels, or funds you so have.

Seventh Interrogatory.—Have you not in your hands, or under your control, some notes, drafts, or other bills receivable, or debts, or choses in action, or credits, belonging to said John Given, or in which he is interested? State fully and particularly.

Eighth Interrogatory.—Is not the said Given part owner of some vessel, and have you not in your hands funds or property belonging to the owners of said vessel? State fully and particularly.

A. N., Proctor for Libellant.

ANSWERS BY A GARNISHEE TO INTERROGATORIES PROPOUNDED TO HIM.

Court and Title of the Cause.

Answers of J. W. E., garnishee, to the interrogatories of Thomas Gould.

To the First Interrogatory.—My name is J. W. E.; I reside in New York, and am a merchant.

To the Second Interrogatory.—I have known the defendant two years, during which time he has been a shipmaster.

(And so on, answering fully and truly to each Interrogatory.)

(Verification.)

PREPARATORY INTERROGATORIES IN PRIZE CASES.

Standing interrogatories to be administered by a prize commissioner to all persons that may be produced as witnesses to be examined *in preparatorio*, in relation to any ship or vessel, goods, wares, or merchandise, which may be captured or taken as prize and brought into the Southern District of New York.

(Let each witness be interrogated to every of the following questions, and their answers to each interrogatory be written down under the commissioner's direction and supervision:)

1. Where were you born, and where do you now live, and how long have you lived there? Of what province or state are you a subject or citizen, and to which do you owe allegiance? Are you a citizen of the United States of America? Are you a married man, and, if married, where do your family and wife reside?

2. Were you present at the capture or taking of the vessel, or her lading, or any of the goods or merchandises concerning which you are now examined?

3. When and where was such seizure and capture made, and into what place or port were the same carried? Had the vessel so captured any commission, or letters, authorizing her to make prizes? What, and from whom? For what reasons or on what pretence was the seizure made?

4. Under what colors did the captured vessel sail? What other colors had she on board, and for what reason had she such other colors?

5. Was any resistance made at the time of the capture, and by whom? Were any guns fired, how many, and by whom? By what ship or ships was the capture made? Were any other, and what ships in sight at the time of the capture? Was the vessel captured a merchantman, a ship-of-war, or acting under any commission as a privateer or letter of marque and reprisal, and to whom did such vessel belong? Was the capturing vessel a ship-of-war, a letter of marque and reprisal, or privateer, and of what force?

6. Had the capturing vessel or vessels any commission to act in the seizure or capture of the vessel inquired about, and from whom, and by what particular vessel was the capture made? Was the vessel seized, condemned, and if so, when and where, and for what reason, and upon what account, and by whom, and by what authority or tribunal was she condemned?

7. What was the name of the vessel taken, and of her master or commander? Who appointed him to the command of the said vessel, and where? How long have you known the vessel and him, and when and where did he take possession of her, and who by name delivered the same to him? Where is the fixed place of abode of the master, with his wife and family, and how long has he lived there? If he has no fixed place of abode, where was his last place of residence, and how long did he live there? Where was he born? Of what country or state is he a subject or citizen?

8. Of what tonnage or burden is the vessel which has been taken, and about which you are examined? What number of the vessel's company belonged to her at the time she was seized and taken, and how many were then actually on board her? What countrymen are they? Did they all come on board at the same port and time, or at different ports and times, and when and where? Who shipped or hired them, and when and where?

9. Did you belong to the company of the vessel so captured, at the time of her seizure, and in what capacity? Had you, or any of the officers, or mariners, or company, belonging to the said vessel at the time of her capture, any part, share, or interest in the same, or in the goods or merchandise laden on board her, and what in particular, and what was the value thereof at the time the said vessel was captured, and the said goods seized?

10. How long have you known the said vessel? When and where did you first see her? How many guns did she carry? How many men were on board of her at the beginning of the engagement, before she was captured? Of what country build was she? What was her name and how long was she so called? Whether do you know of any other name she was called by, and what were such names, as you know or have heard?

11. To what ports and places was the vessel, concerning which you are now examined, bound on the voyage wherein she was taken and seized? Where did the voyage begin, and where was the voyage to have ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized. In what year and in what month was the same put on board? Do you, or not, know she had on board during her last voyage, and when, goods contraband of war, or otherwise prohibited by law, and what goods?

12. Had the vessel of which you are examined any passport or sea-brief on board, and from whom? To what ports or places did she sail during her last voyage, before she was taken? Where did her last voyage begin, and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports, and at what time, particularly from the last clearing port, did the said vessel sail, previously to the capture?

13. What lading did the vessel carry at the time of her first setting sail on her last voyage, and what particular sort of lading and goods had she on board at the time she was taken? In what year and in what month was the same put on board? Set forth the different species of the lading, and the quantities of each sort.

14. Who were the owners of the vessel and goods, concerning which you are now examined, at the time of their capture and seizure? How do you know they were owners thereof at that time? Of what nation or country are they by birth, and where do they live with their wives and families? How long have they resided there? Where did they reside

previously, to the best of your knowledge? Of what country or state are they subjects or citizens?

15. Was any bill of sale given, and by whom, to the owners of the said vessel, and in what month and year? Where, and in presence of what witnesses, was it made? Was any, and what engagement entered into concerning the purchase, further than what appears upon the bill of sale? Where did you last see it, and what has become of it?

16. In what port or place, and in what month and year, was the lading found on board the vessel, at the time of her capture or seizure, first put on board her? What were the names of the respective laders or owners, or consignees thereof? What countrymen are they? Where did they reside before, to the best of your knowledge, and where were the said goods to be delivered, and for whose real account, risk, or benefit? Have any of the said laders or consignees any, and what interest in the said goods? What were the several qualities, quantities, and particulars of the said goods, and have you any, and what reason to know or fully believe that if the said goods shall be restored and unladen at the destined ports, they did, do, and will belong to the same persons, and to none others?

17. How many bills of lading were signed for the goods seized on board the said vessel? Were any of those bills of lading false or colorable, or were any bills of lading signed which were different in any respect from those which were on board the vessel at the time she was taken? What were the contents of such other bills of lading, and what became of them?

18. Have you in your possession, or were there on board of the said vessel, at the time of her capture, any bills of lading, invoices, letters or other writings, to prove or show your own interest, or the interest of any other person, and of whom, in the vessel or in the goods concerning which you are now examined? If in your power, produce the same, and set forth the particular times when, where, and in what manner, and upon what consideration, you became possessed thereof. If you cannot produce such paper evidences, then state in whose possession you last saw them, or where you know or believe they are kept, and when, and by whom they were brought or sent within this district, and also set forth the contents or purport of such papers.

19. State the degrees of latitude and longitude in which the said vessel and her cargo were captured, as also the year, month, and day, and time thereof, in which such seizure was made, and in or near what port or place, and whether it was a port of any State or Territory of the United States of America, and what one. Was any charter party for the voyage upon which the said vessel was captured signed and executed, and by whom, and when? If in your possession, produce the same. If not, set forth its contents and state what has become of it.

20. What papers, bills of lading, letters, or other writings relating to the vessel or cargo, were on board the vessel at the time she took her departure from her last clearing port, before she was taken as prize? Were any of them burnt, torn, thrown overboard, destroyed or canceled, or attempted to be concealed, and when, and by whom, and who was then present?

21. Did you or the owner, master, or person having command of the said vessel or her navigation, at the time and place of her capture, know or have notice that such place or port was in a state of war with the United States, and that the naval forces of the United States held such port in a state of blockade? How, when, or where had you such knowledge or notice, and when and where did the master or commandant obtain it?

22. Was such port under an order of blockade by the Government of the United States, at the time the said vessel entered or made an attempt to enter the same? Had warning or notice of such blockade been given to, or received by the owner, master or commandant of said vessel, before or at the time she entered, or attempted to enter the said port, and when, and in what manner? Had notice in writing been indorsed on the register or other ship's papers of the said vessel, and when, where, and by whom, of an existing blockade of such port, before she entered, or attempted to enter the same, or before the time of her sailing, or attempting to sail therefrom?

23. Was the register of the vessel, about which you are examined, shown to, or examined by any officer of the United States navy, or by any revenue officer of the United States, before she was captured and taken, and before she entered the port at, or near which, she was taken and seized, and was the register, or other ship's papers, indorsed by said United States officer? Declare fully all you know, or have reason to believe, respecting this interrogatory, stating the persons, times, and places connected therewith.

24. Do you know, or do you believe from information, and if the latter, from what information, and when and how was it obtained, that the vessel inquired about, at any time or times, after the blockade of the said port, and with notice thereof, and when, attempted covertly and secretly to enter the said blockaded port, or to sail therefrom, without success? Disclose fully all your knowledge, information, and belief thereon, with the particulars upon which the same is founded.

25. Has the vessel, concerning which you are now examined, been at any time, and when, seized as prize and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

26. Have you sustained any loss by the seizing and taking the vessel concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

27. Is the said vessel or goods, or any, and at what ports insured? If yea, for what voyage is such insurance made, and what premium, and when, and by what persons, and in what country was such insurance made?

28. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the prop-

erty of the consignees, or any person, and whom? Or was the lader to take the chance of the market for the sale of his goods?

29. Let each witness be interrogated of the growth, produce, and manufacture, on board the vessel. Of what country and place was the lading, concerning which they are now interrogated, or any part thereof?

30. Whether all the said cargo, or any and what part thereof, was taken from the shore, or quay, or removed, or transhipped from one vessel to another, from what and to what shore, quay, and vessel, and when and where was the same so done?

31. Are there in any country besides the United States, and where, or on board any and what vessel, or vessels, other than the vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers, or documents, relative to the said vessel or cargo, and of what nature are they, and what are their contents?

32. Were any papers delivered out of the said vessel, and carried away in any manner whatsoever, and when, and by whom, and to whom, and in whose custody, possession, or power do you believe the same now are?

33. Was bulk broken during the voyage on which you were taken, or since the capture of the said vessel, and when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

34. Were any passengers on board the aforesaid vessel? Were any of them secreted at the time of the capture? Who were the passengers by name? Of what nation, rank, profession, or occupation? Had they any commission—for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any and what property, or concern, or authority, directly or indirectly, regarding the vessel and cargo? Were there any officers, soldiers, or mariners, secreted on board, and for what reason were they secreted? Were any citizens of the United States on board, or secreted, or confined at the time of the capture? How long, and why? Whether any persons on board the said vessel, at the time of her capture, were citizens or residents of any State or Territory of the United States then in a state of war or rebellion against the United States, its government and laws. If so, who by name, and of what State or Territory? What was their employment on board the vessel, and what their destination?

35. Were and are all the transports, sea-briefs, charter parties, bills of sale, invoices, and papers which were found on board, entirely true and fair, or are any of them false or colorable? Do you know of any matter or circumstance to affect their credit? By whom were the passports or sea-briefs obtained, and from whom? Were they obtained for this vessel only, and upon the oath or affirmation of the persons therein described, or were they delivered to or on behalf of the person or persons who appear to have been sworn or to have affirmed thereto without their having ever, in fact, made any such oath or affirmation? How long a time were they to last? Was any duty or fee payable and paid for the same, and is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often, and has the duty or fee been paid for such

renewal? Was the vessel in a port in the country where the passports and sea-briefs were granted; and if not, where was the vessel at the time? Had any person on board any passport, license, or letters of safe conduct? If yea, from whom, and for what business? If it should appear that there are in the United States, or in any other place or country besides the United States, any bills of lading, invoices, instruments, or papers, relative to the vessel and goods concerning which you are now examined, state how they were brought into such place or country. In whose possession are they, and do they differ from any of the papers on board, or in the United States, or elsewhere, and in what particular do they differ? Have you written or signed any letters or papers concerning the vessel and her cargo? What was their purport? To whom were they written and sent, and what has become of them?

36. Towards what port or place was the vessel steering her course at the time of her being first pursued and taken? Was her course altered upon the appearance of the vessel by which she was taken? Was her course at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship papers? Was the vessel, before or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship papers? At what distance was she therefrom? Was her course altered at any, and what time, and to what other port or place, and for what reason?

37. By whom and to whom hath the said vessel been sold or transferred, and how often? At what time and at what place, and for what sum or consideration? Has the same been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent, or what security or securities have been given for the payment of the same; and by whom, and where do they now live? Do you know or believe in your conscience, such sale or transfer has been truly made, and not for the purpose of covering or concealing the real property? Do you verily believe that if the vessel should be restored, she will belong to the persons now asserted to be the owners, and to none others?

38. What guns were mounted on board the vessel, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other guns, weapons, warlike arms, or armament of any name or description, and if any, what? Were there any parts of warlike arms, not put together or finished, or any ammunition, fixed or unfixed, or any balls, shells, rockets, hand-grenades, flints, percussion caps, or any other thing known to be intended for military equipment? Were there any belts, ball moulds, saltpetre, nitre, camp equipage, military tools, uniforms, soldiers' clothing, or accoutrements, or any parts of them, or any sort of warlike or naval stores? Were any of such warlike or naval stores, or things, thrown overboard to prevent suspicion at the time of the capture; and were any such warlike stores, before described, concealed on board under the name of merchandise, or any other colorable appellation, in the ship papers? If so, what are the marks on the casks, bales, and packages in which they were concealed? Are any of the be-

fore named articles, and which, for the sole use of any fortress or garrison in the fort or place to which such vessel was destined? Do you know, or have you heard of any ordinance, placard, or law, existing in such country or state forbidding the exportation of the same by private persons without license? Were such warlike or naval stores put on board by any public authority? When and where were they put on board?

39. What is the whole which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the vessel and cargo concerning which you are now examined, at the time of the capture?

40. Did the said vessel, on the voyage in which she was captured (or on), or during any or what former voyage or voyages, sail under the convoy of any ship or ships of war, or other armed vessel or vessels? For what reason or purpose did she sail under such convoy? Of what force was or were such convoying ship or ships, and to what state or country did the same belong? What instructions or directions had you or did you receive on each and every of such voyages, when under convoy, respecting your sailing or keeping in company with such armed or convoying ship or ships; and from whom did you receive such instructions or directions? Had you any, and what directions or instructions, and from whom, for resisting, or endeavoring to avoid or escape from capture, or for destroying, concealing, or refusing to deliver up your vessel's documents and papers; or any, and what other papers, that might be or were put on board your said ship? If so, state the tenor of such instructions, and all particulars relating thereto. Are you in possession of such instructions, or copies thereof? If so, leave them with the commissioner, to be annexed to your deposition.

41. Did the said vessel, during the voyage in which she was captured, or on making any and what former voyage or voyages, sail to or attempt to enter, any port under blockade by the arms or forces of any, and what, belligerent power? If so, when did you first learn or hear of such port being so blockaded, and were you at any, and what time, and by whom, warned not to proceed to, or to attempt to enter into, or to escape from, such blockaded port? What conversation or other communication passed thereon? And what course did you pursue upon and after being so warned off?

42. Whether or no the vessel concerning which you are examined, did sail on her last voyage prior to her seizure, carrying a commission or license as a privateer, or letter of marque and reprisal, or other authority from any person or persons, to cruise against the persons or property of citizens of the United States, and to make prizes thereof? By whom was such authority, license or direction given, and when? Was it in writing? If so, did it remain with the vessel up to the time of her capture, or was it destroyed or concealed previous thereto? When, and by whom? What were the contents or purport thereof? State all the facts in your knowledge within this inquiry, and the sources of such knowledge. Also state fully all the acts known to you to have been done by the vessel, her mas-

ter or crew, under such commission or license up to the period of her capture.

43. Whether or no the said vessel inquired about, at any time, and when and where, sailed or acted in company or concert with any other armed vessel or vessels, and what, in cruising against, pursuing, or seizing as prize, any persons, vessels, or property of citizens of the United States? Declare fully and particularly your knowledge, information and belief therein.

LETTERS ROGATORY.

The President of the United States of America, to the Chief Justice and Assistant Justices of the Court of General Assize, being one of Her Britannic Majesty's Courts of Judicature of the Bermuda Islands, at the town of Hamilton, in the Islands of Bermuda, Greeting:

Whereas, there is now pending in our District Court of the United States for the Southern District of New York, a certain suit *in rem* against three hundred and thirteen barrels of whiskey, wherein the United States of America is libellant and N. H., is claimant (a copy of the pleadings in which proceeding more particularly referring to the serial numbers of said barrels being hereto annexed for your information and convenience), and it has been suggested to us that the facts as alleged by the libellant, the United States of America, will appear by the testimony of, and by evidence in the possession of H. C. O., and other witnesses to be hereafter named and pointed out to you by the proctor or agent for the said libellant, who can produce and give competent evidence and testimony concerning the matters above mentioned, and who are residents within your jurisdiction, and without whose testimony justice cannot completely be done between the parties to the said suit, and that the claimant is desirous of having the evidence of other witnesses residing in your jurisdiction taken and certified on his behalf;

We therefore request you that in furtherance of justice you will examine into the following matters, viz., when, by whom, on what vessel, and at what place the three hundred and thirteen barrels of whiskey proceeded against in this suit were imported into the Islands of Bermuda; by whom said barrels of whiskey were warehoused; who had control and who was the owner thereof; who gauged the same at any time while they were in the Islands of Bermuda; whether the owner thereof ever examined said barrels of whiskey while they were in Bermuda; if so, when and where; whether the said owner of said barrels of whiskey ever requested the person who warehoused said barrels of whiskey to doctor, or add spirits to, change the condition of, or manipulate in any way the same; and whether said barrels of whiskey were ever, while in the Islands of Bermuda, doctored, changed in condition, or manipulated in any way by any one, and if so, when and where, and by whom, and by whose instructions. Also, when, and on what vessel, and consigned to whom, were said barrels of whiskey returned to this country;

And that you will by the proper and usual process of your court, cause and require H. C. O., and the other witnesses to be hereafter named and pointed out to you by the proctor or agent for either party herein, to attend before you or one of you, or before some person to be appointed by you for that purpose, and after they and each of them shall have made oath or affirmation to speak the truth, the whole truth and nothing but the truth, that you will cause the said H. C. O., to produce the following papers and documents, viz.:

First. All letters and cablegrams received by H. C. O. at any time from the American Export and Warehouse Company, of Cincinnati, Ohio.

Second. All copies of letters and cablegrams written and sent by H. C. O., at any time to the American Export and Warehouse Company, Cincinnati, Ohio; or to any other person in any manner relating to said barrels of whiskey or any part thereof. And more especially a copy of his letter to the American Export and Warehouse Company, of Cincinnati, Ohio, written at some time subsequent to the month of March, 1890, asking and inquiring if said American Export and Warehouse Company would permit or were willing that said whiskey or any part thereof should be doctored or changed in any way by the introduction and addition thereto of alcohol or spirits.

Third. All books, books of account, or any other memorandum showing the marks and serial numbers of the barrels or any part thereof containing said whiskey stored in the warehouse of H. C. O., as aforesaid.

Fourth. All records of the gauges of said barrels of whiskey or any part thereof which may have been made while said barrels of whiskey were at Bermuda.

And that you will cause the originals of such documents, letters, papers and entries in any books or books of account, or duly certified copies thereof, to be returned to us hereunder.

And also that you will cause the said H. C. O., and the other witnesses to be hereafter named and pointed out to you by the proctor or agent for either party herein to answer upon their oaths the questions to be propounded to them and each of them, and that you will cause the said questions and the answers of said witnesses thereto to be reduced to writing, and the writing containing said questions and answers to be signed by them and verified by the signatures of yourselves, or one of you.

And that you will cause the documents, letters, papers and entries in any books or books of account produced by said H. C. O., or duly certified copies thereof, and the testimony of the said H. C. O., and of the other witnesses to be hereafter named and pointed out to you by the proctor or agent for either party herein, together with these presents, to be returned to us by mail under cover addressed to the Consul of the United States of America nearest to the place where these Letters Rogatory may be executed, to be returned by him to the Clerk of the United States District Court for the Southern District of New York City, New York.

And we shall be ready and willing to do the same for you in a similar case when required.

Witness the Honorable A. B., Judge of the United States District Court

for the Southern District of New York, and the seal of said District Court at the city of New York in the Southern District of New York, the first day of October in the year of our Lord one thousand eight hundred and ——

[SEAL]

S. H. L., Clerk.

United States of America, Southern District of New York, ss.:

I, A. B., Judge of the District Court of the United States in and for the Southern District of New York, do hereby certify that S. H. L., whose signature is attached to the Letters Rogatory hereto annexed, was at the date thereof, the Clerk of the District Court of the United States in and for the Southern District of New York; that the official acts and doings of said clerk are entitled to full faith and credit, and that the attestation to said Letters Rogatory is in due form of law.

I further certify that the seal attached to said Letters Rogatory is the seal of this court.

Witness my hand and the seal of said court at the city of New York the first day of October in the year of our Lord one thousand eight hundred and ——.

[SEAL]

A. B., United States District Judge.

UNITED STATES OF AMERICA, DEPARTMENT OF JUSTICE. }
WASHINGTON, D. C., October 4, 18—. }

I, W. H. H. M., Attorney General of the United States, do hereby certify that A. B., whose name is signed to the accompanying papers, is now, and was at the time of signing the same, United States District Judge in and for the Southern District of New York.

[SEAL] In witness whereof, I have hereunto set my hand, and caused the seal of the Department of Justice to be affixed, on the day and year first above written.

W. H. H. M., Attorney-General of the United States.

United States of America, Department of State.

To all to whom these presents shall come, Greeting:

I certify that the document hereunto annexed is under the seal of the Department of Justice of the United States; and is entitled to full faith and credit.

[SEAL] In testimony whereof, I, J. W. F., Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done at the city of Washington on this 4th day of October, A. D. 18—, and of the Independence of the United States of America the one hundred and ——.

J. W. F.,

Secretary of State of the United States.

LETTERS ROGATORY ON INTERROGATORIES.

The President of the United States of America, to any judge or tribunal having jurisdiction of civil causes, at Havana, in the Island of Cuba.

Whereas a certain suit is pending in our District Court of the United States for the Southern District of New York, in which James Jones is libellant, and John D. Nelson, Henry Abbot, and Joseph E. Tatem are claimants of the schooner Perseverance, her tackle, apparel, furniture, and cargo, and it has been suggested to us that there are witnesses residing within your jurisdiction, without whose testimony justice cannot be completely done between the said parties: We therefore request you that in furtherance of justice, you will, by the proper and usual process of your court, cause such witness or witnesses as shall be named or pointed out to you by the said parties, or either of them, to appear before you, or some competent person by you for that purpose to be appointed and authorized, at a precise time by you to be fixed, and there to answer on their oaths or affirmations to the several interrogatories hereunto annexed, and that you will cause their depositions to be committed to writing, and returned to us under cover, duly closed and sealed up, together with these presents. And we shall be ready and willing to do the same for you in a similar case, when required.

Witness, the Honorable S. R. B., Judge of the said court, at the city of New York, the tenth day of May, in the year of our Lord 18—, and of our independence the ——— A. B., Clerk.

(Certificates as in preceding Form.)

(Annex Interrogatories.)

NOTE OF ISSUE.

United States District Court for the Southern District of New York.

AMERICAN INSURANCE CO.	}	A. & B., for Libellant, — Wall St., N. Y.
vs.		
STEAMSHIP CITY OF N.	}	C. & D., for Claimant, — Broadway, N. Y.

Contract (or Collision, or Demurrage, etc., etc.)

Issue joined, May 13, 18—.

ORDERS AND DECREES.

THE CAPTION OF ORDERS AND DECREES.

At a stated term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Federal Building in the city of New York, on the third day of January, 18—,

Present—Honorable C. B., District Judge.

A. B.	}
vs.	
C. D.	

THE ORDER OF THE JUDGE FOR BAIL, TO BE ENDORSED ON THE LIBEL.*Title of the cause.*

On the libel and stipulation for costs filed herein, and on motion of A. B., proctor for libellant, let a warrant of arrest issue in this cause against the defendant, and let him be held to bail in five hundred dollars.
Dec. 18, 18—.

S. R. B., U. S. D. J.

INTERLOCUTORY DECREE OF CONDEMNATION BY DEFAULT AND REFERENCE TO A COMMISSIONER.

(Caption, see page 651.)

Title of the Cause.

The marshal having returned, on the process issued in the above entitled cause, that he has attached the said vessel, her tackle, apparel, and furniture, and has given due notice to all persons claiming the same that this court would, on this day, proceed to the trial and condemnation of the said vessel, her tackle, etc., should no claim be interposed for the same; and proclamation having been made for all persons interested in the said vessel, her tackle, etc., to appear and interpose their claims; and due proof having been furnished of actual notice of the suit to John Doe, owner (or agent or master) of said vessel; and no person appearing, it is now, on motion of M. N., Esq., proctor for libellant,

Ordered, that the defaults of all persons be and the same are hereby entered, and that the said vessel, her tackle, etc., be condemned and sold to answer the prayer of the libel, and that a *venditioni exponas* issue accordingly and that the sale take place on board of said vessel where she now lies; and on like motion it is

Ordered, that it be referred to C. D., Esq., United States Commissioner to ascertain and compute the amount due the libellant for freight (or other cause) and to report the same to this court, with all convenient speed.

INTERLOCUTORY DECREE FOR THE LIBELLANT ON HEARING, WITH REFERENCE TO COMPUTE.

(Caption, see page 651.)

Title of the Cause.

This cause coming on to be heard on the pleadings and proofs adduced by the respective parties, and having been argued and submitted, and due deliberation having been had, it is now

Ordered, Adjudged, and Decreed by the court that the libellant recover his wages as claimed in this cause: and it is further

Ordered, that it be referred to L. M., Esq., commissioner, to ascertain and compute the amount due to the libellant in the premises, and to report the same to this court, with all convenient speed.

ORDER OF CONFIRMATION OF THE REPORT OF A COMMISSIONER, AND FINAL DECREE, WITH JUDGMENT AGAINST THE SURETIES, ON BOND TO MARSHAL.

(Caption, see page 651.)

Title of the Cause.

The time for filing exceptions to the commissioner's report in the above entitled cause having expired, and no exceptions having been filed, on reading and filing the report of George W. Morton, United States Commissioner, to whom the above matter was referred, by which there is reported due the libellant for the wages [or freight, or other cause] demanded in the libel, the sum of dollars: On motion of proctor for the libellant, it is ordered that the report be in all things confirmed, and that the defendant pay the libellant in this action the amount so reported due to him, together with his costs to be taxed.

And on like motion, it is further ordered, that a summary judgment be, and the same is hereby entered against the said A. B., the principal, and C. D., the surety, for the sum of dollars, the amount of the bond and stipulation given to the marshal, on bonding; and that the libellant have execution thereon to satisfy this decree.

FINAL DECREE FOR A SUM CERTAIN, WITH COSTS.

(Caption, see page 651.)

Title of the Cause.

This case having been heard on the pleadings and proofs, and having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, it is now Ordered, Adjudged, and Decreed by the court, that the defendant pay to the libellant the sum of two hundred dollars, with his costs to be taxed.

DECREE ON THE MERITS, WITH REFERENCE TO A COMMISSIONER.

(Caption, see page 651.)

Title of the Cause.

This cause having been heard on the pleadings in the cause, and having been argued and submitted by the advocates of the respective parties, and due deliberation having been had, it is now Ordered, Adjudged, and Decreed, that the libellant recover against the defendant the amount due by the charter party, [or bill of lading—or bottomry—, or respondentia bond—or for the materials—or for the supplies mentioned in the pleadings,] and that it be referred to a U. S. commissioner, to ascertain the amount so due, and to report the same to the court, with all convenient speed.

FINAL DECREE OF FORFEITURE ON A LIBEL OF INFORMATION.

(Caption, see page 651.)

Title of the Cause.

The monition issued in this cause having been heretofore returned, and the usual proclamation having been made, and the default of all persons being duly entered, it is thereupon, on motion of Ogden Hoffman, Esq., attorney for the United States, Ordered, Sentenced, and Decreed, by the court now here; and his Honor the District Judge by virtue of the power and authority in him vested, doth hereby order, sentence, and decree, that the four cases of broadcloths, mentioned in the libel in this cause, be, and the same accordingly are condemned as forfeited to the United States.

And upon like motion, it is further ordered, sentenced, and decreed, that the clerk of this court issue a writ of *venditioni exponas* to the marshal of the district, returnable upon the day of next. And that upon the return thereof, the clerk distribute the proceeds according to law.

 FINAL DECREE FOR THE DEFENDANT.

(Caption, see page 651.)

Title of the cause.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the advocates of the respective parties, and due deliberation having been had, and it appearing to the court that the claimant has made out a sufficient and valid title to the vessel, it is now Ordered, Adjudged, and Decreed by the court, that the libel filed in the cause be dismissed with costs, to be taxed against the libellant. And on motion of the proctors for the claimant, it is further ordered, that unless an appeal be taken from this decree, within the time limited and prescribed by the rules of this court, the claimant's stipulations be cancelled.

 INTERLOCUTORY DECREE AGAINST TWO VESSELS.

(Caption, see page 651.)

Title of the cause.

This cause having been heard on the pleadings and proofs, and having been argued and submitted by the advocates for the respective parties, and due deliberation having been had, it is now, on motion of A. B., proctor for libellant,

Ordered, Adjudged and Decreed by the court that the libellant above named recover herein one half of the damages as set forth in the libel against the steamboat D., her engines, etc., and one-half against the steam-tug C. F., her engines, etc., with costs, and that any balance which the libellant shall not be able to collect from or enforce against either

of said vessels be paid by the other vessel to the amount of its stipulation for value, and that the said vessels and their stipulators be condemned therefor: and it is further

Ordered, that it be referred to S. H. L., Esq., one of the commissioners of this court, to ascertain the amount of such damages, and to report thereon to this court with all convenient speed.

A. B., U. S. District Judge.

FINAL DECREE AGAINST TWO VESSELS BOTH IN FAULT.

(Caption, see page 651.)

Title of the cause.

An interlocutory decree having been heretofore entered herein, whereby, among other things, it was adjudged that the libellant recover the damages by it sustained, by reason of the matters and things in its libel set forth, one-half against the steamboat D., her engines, etc., and one-half against the steamtug C. F., her engines, etc.;

And the amount of said damages, including interest, having been reported by S. H. L., the United States Commissioner heretofore appointed to ascertain the same, at the sum of twenty-five hundred dollars, and no exceptions having been filed the report of the said Commissioner, and the costs of the libellant having been taxed at one hundred and forty seven 19-100 dollars it is now, on motion of A. B., proctor for libellant,

Ordered, Adjudged and Decreed that the libellant, the B. Company, recover herein against the steamboat D., her engines, etc., and the steamtug C. F., her engines, etc., the sum of twenty-five hundred dollars, damages and the further sum of one hundred and forty-seven 19-100 dollars, costs as taxed, making in all the sum of twenty-six hundred and forty-seven 57-100 dollars: and it is further

Ordered, Adjudged and Decreed that as between the claimants of the said steamboat D., her engines, etc., and the claimants of the said steamtug C. F., her engines, etc., the said amounts of damages and costs so adjudged to the libellant be paid by the said claimants, respectively, and their sureties in equal parts, that is to say, one half of said sum, by the claimant of the said steamboat D., or its sureties, and one half thereof by the claimant of the said steamtug C. F., or its sureties; and that any balance of either of said halves which the libellant may not be able to collect from or enforce against either of said vessels, or their respective claimants or sureties, be paid by the other vessel, her claimant or sureties, and that the said vessels, their engines, etc., be condemned therefor: and it is further

Ordered, Adjudged and Decreed, that on the payment of the claimant of either vessel of the said one half of said damages and costs, and interest thereon to the date of payment, the proceedings of the libellant be stayed as to such vessel, and her claimant, for the collection of the residue, until the return by the marshal of an execution unsatisfied against the claimant of the other vessel for the other half part of said amount,

or until it shall otherwise appear that the said libellant is unable to enforce or collect the other part of said damages, costs and interest against the claimants of the other vessels by process from the court: and it is further

Ordered, Adjudged and Decreed, that, unless an appeal be taken from this decree within the time limited by law and the rules and practice of this court, the stipulators for costs and value on the part of the claimant of said steamboat D., and on the part of the claimant of said steam-tug C. F., respectively, do cause the engagement of their stipulations to be performed within ten days, or do show cause within four days thereafter or on the first subsequent day of jurisdiction, why execution should not issue against them to enforce satisfaction of this decree.

A. B.,

United States District Judge.

FINAL DECREE ON CROSS LIBELS WHERE BOTH VESSELS WERE DAMAGED AND BOTH HELD IN FAULT.

(Caption, see page 651.)

G. C.	}
<i>vs.</i>	
THE STEAMSHIP BRITANNIA, HER EN-	}
GINES, ETC.; C. F. & Co., Claimants.	
—	
C. F. F.	}
<i>vs.</i>	
THE STEAMSHIP BEACONSFIELD, HER	}
ENGINES, ETC.; G. C., Claimant.	

An interlocutory decree having been entered in the above entitled suits on the 23d day of April, 18—, whereby it was ordered, adjudged and decreed that the collision mentioned in the pleadings herein was due to fault on the part of both the steamship Britannia and the steamship Beaconsfield, and that the damages arising therefrom be apportioned and the costs divided; and whereby it was further ordered that it be referred to F. H., Esq., Commissioner, to ascertain and compute the damages sustained by each of the libellants by reason of said collision;

And said commissioner having filed his report bearing date 2d day of July, 1889, wherein he reports the amount of the damages sustained by each of the libellants; now on motion of G. B., Esq., proctor for the steamship Beaconsfield; it is

Ordered, that the report of the commissioner be and the same hereby is in all things confirmed; and it is further

Ordered that the damages sustained by the libellant, G. C., by reason of said collision be and the same hereby are assessed as follows:

For damages to the steamship Beaconsfield the sum of \$25,583.98, with interest thereon from December 31st, 18—, to July 2d, 18—, the date of

said report, amounting to \$3,846.12, and for demurrage of said steamship Beaconsfield the sum of \$5,421.50, with interest thereon from January 12th, 18—, to July 2d, 18—, amounting to \$804.19, the whole amounting to the sum of \$35,655.79;

That the damages sustained by the libellant C. F. C. & Co., by reason of said collision be and the same hereby are assessed as follows:

For damages to the steamship Britannia the sum of \$3,582.98, with interest thereon from December 14th, 18—, to July 2d, 18—, the date of said report, amounting to \$541.25, and for demurrage of said steamship Britannia the sum of \$1,560, with interest thereon from December 1st, 18—, to July 2d, 18—, amounting to \$242.23, the whole amounting to \$5,926.46.

And the costs of the libellant, G. C., having been taxed at the sum of \$601.68, and the costs of the libellant, C. F. C. & Co., having been taxed at the sum of \$374.81:

Now therefore, it is hereby

Ordered, Adjudged and Decreed that the libellant, G. C., recover against the steamship Britannia, her engines, etc., one half of the excess of the amount of the damages sustained by him, hereinbefore assessed at \$35,655.79, over the amount of the damages sustained by the libellant, C. F. C. & Co., hereinbefore assessed at \$5,926.46, to wit, the sum of \$14,864.66, in addition to one-half of the difference between the amount of the costs taxed by the respective libellants, amounting to \$113.43, and amounting in all to the sum of \$14,978.09, and that the said steamship Britannia, her engines, etc., be condemned to pay the same: and it is further

Ordered that, unless an appeal be taken from this decree within the time limited by the rules and practice of this court, the stipulators for costs and value on the part of the claimant of said steamship Britannia do cause the engagements of their said stipulations to be performed, or show cause within four days after the expiration of said time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against their goods, chattels and lands for the amount of their said stipulations.

PRIZE—FINAL DECREE OF DISTRICT COURT.

(Caption, see page 651.)

Title of the cause.

It appearing to the court that this ship, of the burthen of about 1500 tons, having a British register, wherein Zachariah Charles Pearson, of London, is stated to be the owner, and Edward Hunter the master, laden with a cargo from Bordeaux, in France, bound ostensibly for Havana, in Cuba, was captured on the fourth day of May, 1862, about thirty miles from Havana, by the United States armed vessel the Somerset, English commanding, on the supposed ground of a purpose to break the blockade of the port of New Orleans, and was sent into this port for adjudication;

and it further appearing that an attachment and monition have been regularly issued and returned served, and that the master of said vessel has appeared and interposed a claim for the said vessel and cargo on account of whom it might concern; and it further appearing, upon the hearing, from the depositions of the master and others of the passengers and crew of the vessel, taken in *preparatorio*, in answer to the standing prize interrogatories, and from the papers, documents, and letters found on board the vessel at the time of her capture, that the voyage of this vessel was got up, commenced, and prosecuted by the owner, shippers, and underwriters, with the illegal and fraudulent purpose and intention that the vessel should break the blockade of the port of New Orleans and should deliver her cargo in that port, and that the vessel was captured while engaged and employed in prosecuting and carrying out such unlawful intent; wherefore, for the causes and reasons herein above stated, it is ordered and decreed that the said vessel, her tackle, apparel, furniture, machinery, and appurtenances, and her cargo, be condemned and confiscated to the United States as prize of war.

WM. MARVIN, Judge.

AFFIDAVIT TO OBTAIN SUMMARY JUDGMENT AGAINST STIPULATORS.
United States District Court, Southern District of New York.

Title of the cause.

Southern District of New York, ss.:

E. G. B., being duly sworn, says: That he is one of the proctors for the libellant herein. That final decree in favor of the libellant was entered herein on the 23d day of July, 18—, and a copy of such decree was, on said day, served upon the proctors for the claimant, which said final decree contained an order that the stipulators for value, and for claimant's costs, should cause the engagement of their stipulators to be performed, or show cause within four days after the expiration of ten days from the date of the service of a copy of said decree on claimant's proctors, with notice of entry, or on the first day of jurisdiction thereafter, why execution should not issue against the stipulators, their goods, chattels and lands. And deponent further says that the said decree has not been satisfied nor any part thereof; that no appeal has been taken by the claimant; [or, that an appeal has been taken, but no bond to stay execution has been given]; that more than ten days has elapsed since the service on claimant's proctors of a copy of the final decree, with notice of entry; that the first day of jurisdiction thereafter has passed; and that no cause has been shown by the stipulators why execution should not issue, in accordance with the provisions of such final decree, against their goods, chattels and lands.

Sworn to before me, etc.

SUMMARY JUDGMENT AGAINST STIPULATORS.

(Caption, see page 651.)

Title of the cause.

A final decree having been entered in the above entitled cause on the twenty-third day of July, 18—, wherein it is ordered that unless said decree be satisfied, or an appeal intervene, the stipulators for value and for claimant's costs do cause the engagement of their stipulations to be performed, or show cause within four days after the expiration of ten days from the date of the service of a copy of said decree on claimants' proctors, with notice of its entry, or on the first day of jurisdiction thereafter, why execution should not issue against said stipulators, their goods, chattels and lands;

And the decree not having been satisfied, and no appeal having been taken by the claimants, and more than ten days having elapsed since the service on their proctors of a copy of said final decree, with notice of its entry, and no cause having been shown by said stipulators, all of which appears by the affidavit, hereto annexed, of A. B., one of the libellant's proctors, verified August —, 19—, it is now, on motion of B. & C., libellant's proctors,

Ordered, Adjudged and Decreed, that a summary judgment be and the same is hereby entered against William Tisdale and Julius Rosendale, the stipulators herein, for the sum of five thousand dollars, the amount of their said stipulation, and that the libellants have execution thereon to satisfy this decree.

NOTICE OF REFERENCE.

District Court of the United States for the Southern District of New York.

A. B.	}	<i>Notice of Reference.</i>
vs.		
C. D.		

In conformity with the order entered in the above entitled cause, you will please take notice that the reference ordered therein will be proceeded with, before me, at my office in the Federal Building, in the city of New York, on the 4th day of May, 18—, at 2 o'clock in the afternoon of that day, at which time and place you are hereby notified to attend with the testimony you may have to offer in the matter referred.

Dated, New York, the 30th day of April, A. D. 18—.

Yours, etc.,

G. W. M., U. S. Commissioner.

To E. F., Proctor for Libellant.

G. H., Proctor for Defendant.

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SOUTHERN DISTRICT OF NEW YORK, } ss.:
County of New York,

O. D. D., being duly sworn, says, he is a clerk in the office of R., B. & B., proctors for the libellant herein; that the foregoing disbursements, have been actually made or necessarily incurred herein by said party to deponent's knowledge. That each of the witnesses named in the Schedule hereunto annexed, which is made a part hereof, attended on days set opposite their respective names therein. That the residences of said witnesses respectively, the distance therefrom, according to the usually traveled route, to the said place of trial, and the number of miles they severally traveled as such witnesses, according to the usually traveled route, for the purpose of going to the place of trial and returning therefrom at said place of trial respectively, are correctly stated and set forth in said Schedule, opposite their respective names. That each and every of said persons named in said Schedule was a necessary and material witness on behalf of the party aforesaid on the trial of this action.

Sworn to before me, this }
 day of . }

O. D. D.

Please take notice that a Bill of Costs, of which the foregoing is a copy, will be presented, for taxation and adjustment, to the Clerk of the District Court of the United States for the Southern District of New York, at his office, at the United States Court Rooms, in the city of New York and Borough of Manhattan on the 3d day of June, 18—, at 10 o'clock, A. M.

Dated, New York, June 1, 18—.

Yours, etc.,

R., B. & B., Libellants' Proctors.

To C. D., Claimant's Proctor.

EXECUTIONS.

VENDITIONI EXPONAS.

Southern District of New York, ss.:

The President of the United States of America to the Marshal of the Southern District of New York, Greeting:

Whereas, a libel was filed in a District Court of the United States for the Southern District of New York on the first day of September, 18—, by P. H. against the ship W., her tackle, apparel, etc., which libel prayed that the said ship, etc., might be condemned and sold to answer the prayer of the libellant; and whereas the said ship has been attached under the process issued out of said district in pursuance of the said libel, and is now in custody of the marshal by virtue thereof; and whereas such proceedings have been thereupon had that by the decree of this court made and pronounced on the 7th day of November, 18—, the said ship, her

tackle, apparel and furniture were ordered to be sold by you, the said marshal, after giving six days' notice of such sale, according to law; Therefore you, the said marshal, are hereby commanded to cause the said ship W., her tackle, apparel and furniture, to be sold in manner and form, upon the notice, and at the time and place by law required, and to have the moneys arising from such sale in this court, at the Federal Building, in the city of New York, Borough of Manhattan, on the second Tuesday of December, 18—, then and there to pay the same to the clerk of this court; and have you also then and there this writ.

Witness the Honorable A. B., Judge of the District Court of the United States for the Southern District of New York, at the city of New York, in the Southern District of New York, this — day of —, 18—.

S. H. L., Clerk.

THE RETURN OF THE MARSHAL.

Title of the cause.

In obedience to the above precept, I have sold the ship W., her tackle, apparel, and furniture, and cargo, and such sale amounts to thirty-nine thousand two hundred and sixty-two dollars and ninety cents, which sum I have paid to the clerk of this court as I have been commanded.

Dated this 22d day of December, 18—.

T. M., U. S. Marshal.

AN EXECUTION OR FIERI FACIAS AGAINST GOODS, CHATTELS, AND LANDS.

The President of the United States of America to the Marshal of the Southern District of New York, Greeting:

Whereas a libel was filed in the District Court of the United States for the Southern District of New York, on the eighteenth day of October, 18—, by Thomas Davis, James Williams, James Collins, and Charles E. Trescott, against Francis Hathaway and Edward Faucon. And such proceeding were thereupon had that by the judgment and decree of the said court in the said cause entered, on the fifth day of October, one thousand eight hundred and forty-three, the said Francis Hathaway and Edward Faucon were required to pay to the libellant, James Williams, the sum of ninety-six dollars and eighty cents, and to the libellant, Thomas Davis, fifty-nine dollars and twenty cents, besides their costs in this suit, to be taxed, and execution was ordered therefor; and whereas the said costs have been taxed at twenty-five dollars, as by the records and files of said court fully appear: Now, therefore, we command you, that of the goods and chattels of the said Francis Hathaway and Edward Faucon, in your district, and in default of goods and chattels of them, then of the lands and tenements in your district of which they were seized on the day you shall receive this writ, you cause to be made the sum of one hundred and eighty-one dollars, with interest from October 5, 18—, and further, that

you have those moneys in said court at the city of New York, on the third Tuesday of June, 18—, to render to the libellants in satisfaction of said decree.

Witness the Honorable S. R. B., judge of the said court, June 4, 18—.
A. M., Clerk.

B. & B., Proctors.

THE MARSHAL'S RETURN.

No goods, chattels, or lands.

H. F. T., Marshal.

OR THIS:

I have collected on the within execution the sum of one hundred and ninety-two dollars, being the within amount, with interest.

Dated July 29, 18—.

H. F. T., Marshal.

ATTACHMENT TO COMPEL OBEDIENCE TO AN ORDER OR DECREE.

The President of the United States, to the Marshal of the Southern District of New York, Greeting:

Whereas in a certain cause, civil and maritime, in the District Court of the United States for the Southern District of New York, where A. B. is libellant against C. D. [or the ship or vessel, etc.,] the said court did, on the 6th day of October, 18—, by a decree made on that day, order that [set forth the order]; and whereas the said C. D. has neglected and refused to obey said order, and thereupon the said court has decreed that an attachment should issue against him to compel him to perform and obey the said order: You are therefore commanded to attach and arrest the said C. D., and him safely keep until he obey and perform the said order, and to return to the said court what you shall do in the premises, with this writ.

Witness the Honorable A. B., judge of the court, this 20th day of October, 18—.

— — Clerk.

MARSHAL'S RETURN.

Title of the cause.

Pursuant to the order of the court, dated October 20, 18—, I have attached and arrested the within named C. D., and have him now in my custody.

Dated New York, October 22, 18—.

— — U. S. Marshal.

PETITIONS.

PETITION FOR REMNANTS AND SURPLUS.

United States District Court, Eastern District of New York.

In the Matter of the Petition of A. M. K.,
for the remnants and surplus of the brig
Herrera, now remaining in the registry
of the court. }

To the District Court of the United States for the Eastern District of New York.

The petition of A. M. K., respectfully shows:

That he is a resident of St. Andrews, N. B., and at the time hereinafter named, was the sole owner of the British brig called the Herrera.

The said vessel was, on the twenty-fourth day of March, 18—, sold by the marshal of this district, under process issued out of this court upon the libel of M., for the sum of seven thousand four hundred dollars, and said sum was duly paid into the registry of this court.

After payment of the decree and all costs in said suit of M. against said vessel, there still remains in the registry of this court the sum of two thousand six hundred and twenty-one dollars and one cent, to which your petitioner claims to be entitled.

No libels, other than said libel of M., were filed against said vessel previous to such sale, except two, on which the vessel was discharged, the suits having been settled and discontinued; no claimant appeared in said suit by M., and no person except your petitioner has interposed a claim, or as your petitioner believes, has any claim to said remnants and surplus.

Wherefore your petitioner prays that this Honorable Court will make an order, directing the clerk of this court to pay over to the petitioner, or his proctors, the amount of such remnants and surplus of the said brig Herrera, now remaining in the registry of this court.

A. M. K.

(*Verification.*)

ORDER OF REFERENCE ON THE ABOVE PETITION.

(*Caption, see page 651.*)

Title of the cause.

On reading and filing the above petition, it is ordered, that it be referred to S. T. J., Esq., a commissioner of this court, to take proof of the facts therein stated.

FINAL DECREE ON THE SAME.

(*Caption, see page 651.*)

Title of the cause.

On reading and filing the report of S. T. J., Esq., United States Commissioner, to whom it was referred to take proof of the matters stated

in the petition in the above matter, by which it appears that the petitioner was, at the time of the sale of the said brig Herrera by the marshal of this district, the sole owner of the said vessel, and is entitled as such owner to the remnants and surplus of said vessel now remaining in the registry of this court, and that no claims have been made to said remnants and surplus, other than by the petitioner, and that there are no liens upon the same, and that such remnants and surplus amount to the sum of two thousand six hundred and twenty-one dollars and one cent:

Now, on motion of B. and B., proctors for the petitioner, it is ordered, that the said report be, and the same is hereby, in all things confirmed, and it is hereby further ordered, adjudged, and decreed that A. M. K., the petitioner herein, is entitled to receive from the registry of this court the amount of said remnants and surplus, as claimed in her petition, and that the same be forthwith paid to her, or her proctors herein, by the clerk of this court.

PETITION TO BANKRUPTCY COURT FOR LEAVE TO FILE LIBEL IN ADMIRALTY.

United States District Court, Southern District of New York.

In the Matter of the B. & F. Contracting }
 Co., Alleged Bankrupt. }

To the District Court of the United States, for the Southern District of New York.

The petition of the W. H. Company, respectfully shows, on information and belief:—

First. That petitioner is and since January 1st, 19—, was a corporation duly organized and existing under the laws of the State of New Jersey, and doing business as a dealer in coal at Hoboken, New Jersey.

Second. At various times in the months of November and December, 19—, at Hoboken, New Jersey, the petitioner furnished coal to the steam-tug F. N. B., at the price in the aggregate of three hundred thirty-six dollars, no part of which has been paid.

Third. The said coal was supplied at the request of the master of said vessel, and upon the credit of the vessel and petitioners claim for the value thereof constitutes a maritime lien upon said vessel, the said vessel at the times aforesaid being foreign to the State of New Jersey where the said coal was supplied, and being owned by the above named alleged bankrupt, which is a corporation existing under the laws of the State of New York.

Fourth. On or about the 5th day of September, 19—, a petition in bankruptcy was filed against the owner of the said vessel, and the said vessel is now in the possession of A. F. C., as temporary receiver of the above named alleged bankrupt under an order made by this court on or about September 7th, 19—, which order among other things contains the usual provision forbidding the alleged bankrupt and all other persons, includ-

ing creditors, from interfering with the possession of the receiver of the said property or beginning any action against the alleged bankrupts.

Wherefore petitioner prays for an order permitting it to file a libel against the vessel upon which the said lien exists, and to prosecute the same to judgment and sale if necessary, and that said order of this court of September 7th, 19—, be modified accordingly, and that petitioner may have such order and further relief in the premises as to the court shall seem just.

A. & A., Attorneys for Petitioner.

(*Verification.*)

NOTICE ON ABOVE PETITION.

United States District Court—Southern District of New York.

In the Matter of the B. & F. Contracting }
Co., Alleged Bankrupt. }

Please take notice that upon the annexed petition of the W. H. Co., and upon all the papers and proceedings herein, a motion will be made before this court at a term thereof to be held in bankruptcy, at the United States District Court held in the United States Court House and Post Office Building in the Borough of Manhattan, New York City, on January 21st, 19—, at 10:30 A. M., on said day for an order permitting the said the W. H. Co., to file a libel and issue process against the steamtug F. N. B., mentioned in said petition, for the lien therein set forth, and for leave to prosecute the same to judgment and execution if necessary or for such other or further relief in the premises as to the court may seem just.

Dated January 15th, 19—.

A. & A., Attorneys for Petitioner.

To A. F. C., Esq., Receiver.

W. B., Esq., Attorney for Petitioning Creditors.

ORDER OF BANKRUPTCY COURT PERMITTING FILING OF LIBEL IN ADMIRALTY.

At a Term of the District Court of the United States for the Southern District of New York, held at the United States Court and Post Office Building, Borough of Manhattan, New York City, on the day of January, 19 .

Present Honorable C. M. H., District Judge.

In the Matter of the B. & F., Contracting }
Co., Alleged Bankrupt. }

The application of the W. H. Co., to file a libel *in rem* against the steamtug F. N. B., coming on to be heard, on reading the notice of such

application and the petition of the W. H. Co., thereto annexed, verified January 15, 19—, with proof of service thereof on A. F. C., temporary receiver herein, and W. B., Esq., attorney for petitioning creditors, and after hearing M. A., of counsel for petitioner and E. G. B., attorney for temporary receiver, and M. G. & D., attorney for alleged bankrupt, on motion of A. & A., attorney for petitioner, it is

Ordered that the petitioner have leave to file a libel *in rem* against the said steamtug F. H. B., for the claim set forth in said petition and to prosecute the same to judgment and execution if necessary, and that the order of this court of September 7th, 1906, enjoining all persons from interfering with the possession of the property of the alleged bankrupt in the hands of said receiver or beginning any action against the said alleged bankrupt, be and the same is hereby modified accordingly.

C. M. H., U. S. D. J.

NOTICE OF LIEN ON DOMESTIC VESSEL.

(Chapter 33 of the Consolidated Laws of New York, sections 80-85.)

Notice is hereby given that John Doe, of Newburg, N. Y., claims a lien upon the seagoing or ocean bound bark or vessel called the Helen, of New York, whereof Richard Doe is the owner (or, whose owner is unknown) for a debt amounting to fifty dollars and upwards (or fifteen dollars and upwards, if not a seagoing vessel), contracted by said Richard Roe (or, by the master, charterer, builder or consignee of the vessel, or the agent of any of them) within this state, for the following purposes: For work done, or material or other articles furnished in this state for or towards the building, repairing, fitting, furnishing or equipping of such vessel.

(Or)

For such provisions and stores, furnished within this state, as were fit and proper for the use of such vessel, at the time when they were furnished.

(Or)

For wharfage and the expense of keeping such vessel in port, and for the expense of employing persons to watch her.

(Or)

For loading or unloading, or for the advances made to procure necessities for such ship or vessel, or for the insurance thereof.

(Or,—whenever the debt amounts to \$25 or upwards.)

For towing or piloting of such vessel, or for the insurance or premium of insurance of or on such vessel, or her freight.

Annexed hereto is a bill of the particulars of the debt (or, a copy of the contract under which the work was done); and the amount claimed to be due from such vessel, is the sum of five hundred dollars.

JOHN DOE.

County of New York, ss.:

JOHN DOE (or his legal representative, agent or assignee), being duly sworn, says that the foregoing notice of lien is true and correct.

Sworn to before me, etc.

JOHN DOE.

(Annex itemized bill, or contract, and file, within ninety days after the debt has become due, in the office of the clerk of the county in which the debt was contracted, or in the office of the clerk of the county of New York, if the debt was contracted in New York County, Kings County or Queens County. If the vessel is a canal boat, file also in the office of the State Comptroller a copy certified by the county clerk.)

APPEALS.

NOTICE OF APPEAL.

United States District Court, Southern District of New York.

ROBERT HURST AND JOHN RANDOLPH,
Libellants and Appellants,

vs.

THE OCEAN STEAMSHIP COMPANY,
Respondent and Appellee.

SIRS:—Please take notice that the libellants above named hereby appeal from the final decree made and entered herein on the 6th day of October, 1891, to the next United States Circuit Court of Appeals for the Second Circuit, to be holden in and for said Circuit, at the City of New York, in the Southern District of New York.

Dated New York, October 12, 18—.

Yours, etc.,

S. C., Proctor for Appellants.

To A. L. M., Esq., Proctor for Respondent.

S. H. L., Esq., Clerk.

ASSIGNMENT OF ERRORS.

United States District Court, Southern District of New York.

ROBERT HURST ET AL.,
Libellants and Appellants,

vs.

THE OCEAN STEAMSHIP COMPANY,
Respondents.

ASSIGNMENT OF ERRORS.

The libellants hereby assign errors in the rulings and proceedings of the District Court herein, as follows:

First. For that the court sustained the objection made on behalf of the respondent herein to the following question propounded to J. L. B. the master of the steamship C., upon cross-examination by the advocate for the libellants:

“Q. What information or instruction did you intend the master of the L. to gather from your answer of one whistle to his one whistle?”

Second. For that the court erred in denying the libellants' motion to strike from the record the answer of J. B. L. the master of the steamship C., to a question propounded upon cross-examination by the libellants, as follows:

“Q. You think, then, that the pilot ought to have known it was your vessel that showed lights off the point of the Hook? A. I think that most of the pilots know the signals of our company, and they know what steamer ought to go out a certain day.”

Third. For that the court erred in denying the libellants' motion to instruct the said witness to answer the said last quoted questions by “Yes” or “No.”

Fourth. For that the court erred in overruling the objection made by the libellants to the following question as being incompetent on redirect examination, propounded on the redirect examination of the master of the steamship C.:

“Q. You made a diagram, have you not, to show the effect, or rather the result of your turning your course to starboard after sighting the L.?”

Fifth. For that the court erred in excluding the following question propounded by the libellants upon cross-examination of H. A. D., pilot of the steamship C.:

“Q. Then why did you accept that signal when it was given? A. For courtesy's sake, which is the practice of the port.

“Q. Supposing you had been discourteous on this occasion for reasons of your own, what would you have done? Objected to. Objection sustained.”

Sixth. For that the court erred in entering a final decree dismissing the libel herein.

Seventh. For that the court erred in refusing to enter a decree in favor of these libellants for the damages sustained by them by reason of the collision set forth in the pleadings herein, with interest and costs, and in not adjudging the respondent and its servants, the master and crew of their said steamship C., at fault for said collision.

Dated New York, October 14, 18—.

S. C.,
Proctor for Libellants and Appellants.

ASSIGNMENT OF ERRORS—SHORT FORM.

United States District Court, Southern District of New York.

E. H. D., AS MASTER, ETC.,

vs.

A CARGO OF CHALK, lately
laden on the SHIP G.
H. F., Claimant and Ap-
pellant.

The above named claimant and appellant hereby assigns error to the decree of the District Court of the United States for the Southern District of New York in the above named case, in the following particulars:

First. In that it ordered, adjudged and decreed that the libellant should recover against said Cargo of Chalk the sum of one thousand eight hundred and seventy-two and 15-100 dollars, and that the said cargo should be condemned therefor.

Second. In that it did not make a decree dismissing the libel, with the costs of the District Court.*

Dated New York, July 24, 18—.

A. & B.,

Proctors for Claimant and Appellant

PETITION OF APPEAL.

*(Petition of Appeal is not necessary on appeals in Admiralty.
Ante § 579.)*

BOND ON APPEAL NOT STAYING EXECUTION.

Know all men by these presents, That we, A. B., residing at West 62d St., in the city of New York, and C. D., residing at East 161st St., New York, are held and firmly bound unto John Doe, in the sum of two hundred and fifty dollars, to be paid to the said John Doe, his heirs, executors, administrators or assigns, for the payment of which well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the day of , 1893.

Whereas, E. F., as appellant, has prosecuted an appeal to the United States Circuit Court of Appeals for the Second Circuit, from a decree of the District Court of the United States, bearing date the day of , 1893, in a suit wherein John Doe is libellant against the steam lighter Alert, her engines, etc.:

*The court in the *Wyandotte*, 145 F. R. 331, intimates that this statement of error is a mere expression of proctor's opinion, and not a proper assignment of error. The form is, however, in common use in the Second Circuit.

Now, therefore, the condition of this obligation is such that if the above named appellant, E. F., shall prosecute said appeal with effect, and pay all costs which may be awarded against him as such appellant if the appeal is not sustained, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Sealed and delivered and taken and	}	A. B.
acknowledged this		C. D.
day		
of 1893, before me.		

(Justification and approval as in the following Form.)

BOND ON APPEAL STAYING EXECUTION.

Know all men by these presents, That we, A. B., residing at West 62d St., New York, and C. D., residing at East 161st St., New York, are held and firmly bound unto John Doe, in the sum of two hundred and fifty dollars, and in the further sum of fifteen hundred dollars, to be paid to the said John Doe, his heirs, executors, administrators or assigns, for the payment of which well and truly to be made, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed with our seals and dated the day of in the year of our Lord, one thousand eight hundred and ninety-three.

Whereas, E. F., as claimant of the steam lighter Alert, has appealed to the United States Circuit Court of Appeals for the Second Circuit, from a decree of the District Court of the United States for the Southern District of New York, bearing date the day of 1893, in a suit in which John Doe is libellant against the steam lighter Alert, her engines, etc., which decree orders the said steam lighter Alert and her stipulators to pay libellants the sum of \$750; and, whereas, said E. F. desires, during the process of such appeal, to stay the execution of the said decree of the District Court:

Now, wherefore, the condition of this obligation is such that if the above named appellant E. F., shall prosecute said appeal with effect and pay all costs which may be awarded against him as such appellant if the appeal is not sustained, and shall abide by and perform whatever decree may be rendered by the United States Circuit Court of Appeals for the Second Circuit in this cause, or on the mandate of said court by the court below, then this obligation shall be void, otherwise the same shall be and remain in full force and effect.

Sealed and delivered and taken and	}	C. D.
acknowledged, this 21st day of		A. B.
May, 1893, before me, etc.		

United States of America, Southern District of New York, ss.

A. B. and C. D. being severally duly sworn, each deposes and says that he resides in the Southern District of New York, and that he is worth the

sum of three thousand five hundred dollars over and above all his just debts and liabilities.

Sworn to this 21st day of May, A. D. }
1893, before me, etc. }

This bond approved as to form and amount and sufficiency of surety.

A. B.,

Proctor for Appellee (or approved by Judge of the C. C. A.).

Dated New York, , 1893.

NOTICE OF FILING BOND ON APPEAL.

United States District Court for the Southern District of New York.

A. B., Appellant, }
vs. }
C. D., Appellee. }

GENTLEMEN: Please take notice that the bond on the appeal herein has been this day filed in the office of the Clerk of the District Court of the United States for the Southern District of New York, and executed and given by E. F., merchant, of No. Front street, and whose residence is at No. W. 57th street, in the city of New York,—and G. H., merchant, of No. Front street, and whose residence is at No. W. 81st street, in said city.

Yours, etc.,

L. M.,

Proctor for Appellant.

New York, August 2d, 18—.

To A. and B., Esqrs.,

Proctors for Appellee.

CITATION IN CAUSE APPEALED FROM DISTRICT TO SUPREME COURT.*

The President of the United States of America, to the M. Company, claimant of the steamship City of Y., in a cause in the District Court of the United States for the Southern District of New York, entitled C. D. against the steamship City of Y., her engines, etc.

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, at the city of Washington, D. C., on the second Monday of October, 19—, pursuant to an appeal to said court duly filed in the clerk's office of the District Court of the United States for the Southern District of New York, wherein the said C. D. is appellant and you are appellee, then and there to show cause, if any there be, why the decree of the District Court of the United States for the Southern

* See §§ 563, 560.

District of New York in the above entitled cause, dated ———, should not be reversed or corrected.

Witness, the Honorable A. B., Judge of the District Court of the United States for the Southern District of New York, at the city of New York and Borough of Manhattan this day of ———, 19—.

A. B.,
United States District Judge.

CLERK'S CERTIFICATE TO APOSTLES.

United States of America, Southern District of New York.

A. and B., Libellants and Appellants, }
vs. }
C. D., Respondent and Appellee. }

I, S. H. L., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the District Court in the above entitled cause, made up pursuant to Rule No. 52 in Admiralty of the United States Supreme Court, and Rule 4 of the Circuit Court of Appeals for the Second Circuit.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, this 10th day of October, in the year of our Lord 18—, and of the Independence of the said United States the ———.

S. H. L., Clerk.

[SEAL]

NOTICE OF APPEARANCE IN THE APPELLATE COURT.

United States Circuit Court of Appeals for the Second Circuit.

A. B. and C. D.,
Libellants and Appellants, }
vs. }
THE BRIG E., HER TACKLE, ETC., E. F., }
Claimant and Appellee. }

The clerk will enter my appearance for the above named claimant and appellee.

L. M.

(This must be signed by a member of the Bar of this Court. Individual, and not firm names must be signed.)

MANDATE.

United States of America, ss.

The President of the United States of America, to the District Court of the United States for the Southern District of New York, Greeting: Whereas, lately in the
 [SEAL.] District Court of the United States for the Southern District of New York, before you, in a cause between F. W., libellant and appellee, and the steamboat C., her engines, etc., J. S., claimant and appellant, the decree of the said court is in the words and figures following, viz.:

“This cause having been heard on the pleadings and proofs of the parties, and having been argued and submitted by the advocates for the respective parties hereto: now on motion of A. and B., proctors for libellant, it is

Ordered, Adjudged and Decreed by the court that the libellant, F. W., recover from the Steamboat C., the sum of \$20,692.16, his damages, together with interest on the sum of \$19,646.76 from the 21st day of June, 18—, the date of the entry of this decree, such interest amounting to the sum of \$91.68, together with the sum of \$958.50, the amount of the libellant's costs as taxed, together amounting to the sum of \$21,742.34; and it is further

“Ordered, adjudged and decreed, that unless an appeal be taken by the claimant of said steamboat from this decree within the time limited and prescribed therefor by law, the stipulators for value and for claimants costs do cause the engagement of their stipulations to be performed, or show cause before me within four days after the expiration of said time to appeal, why execution should not issue against them, their goods, chattels and lands.

(Sgd.)

A. B., U. S. District Judge.”

—as by the inspection of the transcript of the record of the said Court, which was brought into the United States Circuit of Appeals for the Second Circuit, by virtue of an appeal agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, in the present term of October, in the year 18—, the said cause came on to be heard before the said United States Circuit Court of Appeals for the Second Circuit, on the said transcript of record, and was argued and submitted by counsel:

On consideration whereof, it is now here by the court Ordered, Adjudged and Decreed that the said decree of the said District Court be and the same is hereby in all things affirmed, with costs to the said F. W., libellant and appellee, taxed at the sum of \$75.84 by the clerk of this Court, and to be recovered by said appellee in said District Court:

You, therefore, are hereby commanded that such further proceedings be had in said cause, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable M. W. F., Chief Justice of the Supreme Court

of the United States, the seventh day of June, in the year of our Lord 18—.

Costs of Appellee.
Clerk \$12.55
Printing Record 37.91
Attorney 25.00
Notary38
—
\$75.84

W. P.,
Clerk of the United States Circuit Court
of Appeals for the Second Circuit.

DECREE ON MANDATE.

At a stated term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Federal Building in the city of New York, this 10th day of June, 18—.

Present: Hon. A. B., District Judge.

F. W.
vs.
THE STEAMBOAT C., HER TACKLE, ETC.;
J. S., Claimant.

The proctors for the libellant having this day presented to this Court the mandate of the United States Circuit Court of Appeals for the Second Circuit, wherein it is recited that the decree of this Court in this cause dated June 21, 18— has been brought by an appeal into the said Circuit Court of Appeals, and that on consideration thereof it has been ordered, adjudged and decreed by said Court that the said decree of said District Court is in all things affirmed, with costs to appellee, taxed at the sum of \$75.84, and in and by which mandate this Court is commanded that such further proceedings be had in this cause as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding:

Now therefore, on motion of A. and B., proctors for the libellant, it is ordered, adjudged and decreed:

- I. That the judgment of the said Circuit Court of Appeals recited in said mandate be and the same hereby is made the judgment of this Court:
- II. That in addition to the sum specified in the decree of this Court so affirmed as aforesaid to be recovered by the libellant F. W., as damages and costs from the claimant and his stipulators, the said F. W. do recover from the said claimant and his stipulators the further sum of \$75.84, the costs of said F. W. upon the said appeal as taxed: and
- III. That the stipulation for libellant's costs in this cause, filed and recorded on or about September 1st, 18—, be cancelled of record,

A. B., U. S. District Judge.

DECREE ON MANDATE.

At a stated term of the District Court of the United States for the Southern District of New York, held at the Court Room in the Federal Building in the city of New York, on the 3d day of May, 18—.

Present: Hon. A. B., District Judge.

A. B. AND C. D.	}
vs.	
THE BRIG E., HER TACKLE, ETC.	
E. F., Claimant.	

The claimant of the brig Extra having heretofore appealed to the United States Circuit Court of Appeals for the Second Circuit from a decree of this court entered April 29, 18—, condemning said claimant and his stipulators in the sum of one thousand and forty-six 81-100 dollars, and the said Circuit Court of Appeals having heard the said appeal and affirmed the said decree of this court, with interest and the costs of said Circuit Court of Appeals taxed at the sum of seventy-five 62-100 dollars, as appears from the mandate of said Circuit Court of Appeals, duly filed with this court: Now, on motion of C. & D., proctors for libellants, it is

Ordered, adjudged and decreed by the court that the libellants above named recover of the claimants herein and their stipulators the sum of one thousand one hundred and eighty-five 71-100 dollars, their damages and costs as above set forth, and it is further

Ordered that the stipulators for value and for claimant's costs and the stipulators on appeal do cause the engagement of their stipulations to be performed, or show cause within four days, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands, according to their said stipulations.

QUESTION CERTIFIED TO SUPREME COURT BY CIRCUIT COURT OF APPEALS.

United States Circuit Court of Appeals for the Second Circuit.

THE N. Y. C. & H. R. R. Co.,	}
Libellant-Appellee,	
vs.	
THE STEAMTUG "C. E.," J. D. and ano.,	
Claimants-Appellees,	
and the	
STEAMTUG "E. F. M.," her engines, etc., M. M.,	
Claimant-Appellant,	
and	
Scows "15," and "18," The H. D. Company,	}
Claimant-Appellant.	

This cause comes here upon appeals from a decree of the District Court, Southern District of New York, in favor of the libellant for full

damages against the four vessels named in the title in equal proportions against each. The suit was brought *in rem* to recover damages resulting from a collision, and numerous assignments of error were presented and considered by this court and conclusion reached thereon. Upon one point, however, viz.: in what proportions the several offending vessels shall be required to contribute to pay the damages, this court desires instruction before finally disposing of the cause and therefore elects to certify that question to the Supreme Court.

STATEMENT OF FACTS.

About 7.30 p. m. of February 1, 1905, libellant's car float was proceeding up the Hudson River in tow of the tug C. E. M. A single employee of libellant was on board, coiling up lines and getting the float ready for dock, and an employee of the tug was standing on top of the cars keeping lookout. No employee of the libellant participated in any way in the navigation of these two vessels, which was conducted solely by the master of the tug. While thus proceeding they encountered the tug M., which was towing two mud scows out of a slip and down river to the dumping grounds. Scow 15 was immediately behind the M., on a hawser, and behind 15 on another hawser, came Scow 18. Both scows were owned by the H. D. Co. Collision ensued between the car float and scow 15. The car float was not guilty of any fault in her own management, unless, contrary to the decision in *Sturgis v. Boyer* (24 How., 110) she should be held responsible for the faults of the tug which her owner had hired to move her from place to place in the harbor. The tug C. E. M. was guilty of faults of navigation which contributed to the accident. Neither the Scow 15 nor the Scow 18 displayed the lights required by the rules of navigation. There was an employee of the owner in charge of each scow, and it was their duty as well as the duty of the master of the tug to have the lights put up. Both scows, therefore, and the M. were guilty of a common fault contributing to the accident. Besides, the M. was guilty of other faults of navigation, also contributing to the accident.

QUESTION CERTIFIED.

Upon the facts above set forth the question of law arising upon which this court desires the instruction of the Supreme Court is:

"In what proportions shall the damages sustained by the car float be assessed upon the offending vessels."

In accordance with the provisions of Section 6 of the Act of March 31, 1891, establishing Courts of Appeal, etc., the foregoing question of law is by the Circuit Court of Appeals for the Second Circuit hereby certified to the Supreme Court.

April 30, 19—.

W. J. W., Circuit Judge.
E. H. L. Circuit Judge.
W. K. T. Circuit Judge.

United States Circuit Court of Appeals, Second Circuit.

I, W. P., Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing certificate was filed and entered of record in my office on the 30th day of April, 19—, and by direction of the Judges of the said Court, said certificate is forwarded to the Supreme Court of the United States.

Dated New York, May 2nd, 19—.

W. P.

[SEAL]

Clerk of the United States Circuit Court of Appeals for the Second Circuit.

LIMITATION OF LIABILITY.

LIBEL ASKING APPRAISAL.

To the District Court of the United States for the Southern District of New York.

The libel and petition of A. B., owner of the schooner Hattie L., her tackle, apparel and furniture, in a cause of limitation of liability, civil and maritime, alleges as follows:

First. That the libellant is, and was at the time hereinafter mentioned, sole owner of the American schooner, Hattie L., which said schooner is now lying in the port of New York, and within the jurisdiction of this Honorable Court.

Second. On the 4th day of May, 18—, the said vessel left the port of New York, with a cargo of lumber, bound to Carthagena, South America. At the time of leaving New York, she was properly manned and equipped, and had a full complement of officers and seamen aboard, and was in all respects staunch and seaworthy.

Third. While on the said voyage, and about ten o'clock in the morning, of the 20th of May, the said schooner was off the coast of the Carolinas. A dense fog prevailed, and the schooner was sailing close-hauled on a due south course, under easy sail, and not making more than three knots through the water. The wind at the time was about southeast by east. The master was at the wheel, a competent seaman was forward on the lookout, and the schooner's mechanical fog horn was being blown at the intervals required by law. Suddenly the loom of a vessel was seen about a point on the schooner's port bow, and almost immediately afterwards, there came in sight the French bark Helene, bound from Havre to Charleston, S. C., sailing free on a course of about west, and moving through the water at the rate of about eight knots. The helm of the schooner was at once put hard down, to ease as much as possible the blow of the collision which was immediately seen to be inevitable, but the schooner's bow struck the starboard side of the bark, inflicting such injuries that the bark sank shortly afterwards, some of her crew being

drowned, and others injured. Petitioner's said schooner was also severely damaged in the said collision, her bows being stove in, her head gear carried away, and her foretopmast broken, notwithstanding which injuries, she succeeding in reaching the port of Charleston, where temporary repairs were put upon her, and she was towed back to the port of New York, arriving here on the 9th day of June, 18—.

Fourth. On information and belief, petitioner avers that the value of the said schooner, after the said collision, and before being repaired, at the close of said voyage, did not exceed the sum of five thousand dollars, and that the pending freight did not exceed five hundred dollars.

Fifth. The said collision was in no wise caused by fault on the part of the said schooner, her master, officers, or crew, but solely by reason of the negligence of those on board of and in charge of the said bark Helene, in that, though sailing free, she did not keep out of the way of the schooner, which was close hauled; in that she was proceeding at an immoderate rate of speed in a dense fog; in that she was not sounding a mechanical fog horn, as required by law; in that she had no proper lookout, and in other respects, which will be shown on the trial of this cause.

Sixth. The said collision happened, and the loss, damage and injury above referred to, were done, occasioned and incurred, without fault on the part of petitioner, and without his privity or knowledge. Nevertheless, certain libels have been filed against the said schooner, by reason of the said collision and accident, and an action at law has been commenced against your petitioner, the following being a list of such proceedings:

(a) An action at law, brought in the Supreme Court of the State of New York, against petitioner, by one J. N., whose residence is unknown to petitioner, and who claims to recover for personal injuries received in said collision. The attorneys for said plaintiff are C. & D., Esqs., of No. 261 Broadway, and the amount of damages claimed in the complaint is \$10,000.

(b) A suit in admiralty, brought in the United States District Court for this District, by E. F. & Co., of No. 41 Whitehall St., New York, *in rem* against said schooner, claiming to recover for damages sustained by the cargo on board the schooner at the time of the collision. The said schooner has been seized under process in said action. The proctors for libellants are G. & H., Esqs., of No. 19 William St., New York, and the amount claimed in the libel is \$1,000.

(c) A suit in admiralty, brought in the United States District Court of this District, by J. D., as master of the sunken bark Helene, on behalf of the owners thereof, against said schooner. The residence of the said master is unknown to petitioner. The schooner has been seized under process in said action. The proctors for libellant are I. and J., Esqs., of No. 34 Pine street, New York, and the amount claimed in the libel is \$15,000.

In addition to the above, which are all the claims of which petitioner now has knowledge, he is in fear that other suits or actions may be brought against him or the schooner Hattie L. by other parties who may have sustained loss, damage or injury by reason of the said collision.

And petitioner avers that the amount of the claims in the suits already begun against petitioner and the said schooner Hattie L. far exceeds the value of his interest in said schooner and her freight pending.

Seventh. Petitioner desires to claim the benefits of the provisions of sections 4283, 4284 and 4285, of the Revised Statutes of the United States, and the acts amendatory thereof and supplemental thereto: and in this proceeding, by reason of the facts and circumstances hereinbefore set forth, petitioner further desires to contest his liability and the liability of the said schooner Hattie L. to any extent whatever for any and all loss, destruction, damage and injury caused by and resulting from the collision aforesaid.

Eighth. All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, petitioner prays that this court will cause due appraisement to be had of the amount of the value of his interest in the said schooner Hattie L., at the close of said voyage, and her freight then pending, and will make an order for the payment of the same into court, or for the giving of a stipulation, with sureties, providing for the payment thereof as ordered by the court; that the court will issue a monition to all persons claiming damages for any and all loss, destruction, damage or injury caused by or resulting from the collision aforesaid, citing them to appear before a commissioner to be named by the court, and make due proof of their respective claims at or before a certain time to be fixed by said writ; and also to appear and answer on oath the allegations of this petition, according to law and the practice of this court, and that the court will issue its injunction restraining the prosecution of the aforesaid action of J. N. and the suits of E. F. & Co. and of J. D., and the commencement and prosecution hereafter of all and any suit or suits, action or actions, or legal proceedings of any nature or description whatever, except in the present proceeding, against petitioner or the schooner Hattie L., in respect of any claim or claims arising out of said collision; and that the court in this proceeding will adjudge that petitioner and the said schooner Hattie L. are not, and neither of them is, liable to any extent for said loss, damage and injury, or if it shall adjudge that they, or neither of them, are liable, then, that the liability of petitioner be limited to the amount of the value of his interest in said schooner and her freight pending at the close of her said voyage; and that the moneys paid, or secured to be paid as aforesaid, be divided *pro rata* among such claimants as may duly prove their claims before the commissioner heretofore referred to, saving to all parties any priority to which they may be legally entitled; and that petitioner may have such other and further relief in the premises as may be just.

K. & L., Proctors for Petitioner.

K., Advocate.

(Verification as in Form No. 1.)

LIBEL OFFERING SURRENDER AND NOT CONTESTING LIABILITY.

To the District Court of the United States for the Eastern District of New York.

The libel and petition of the New York and West Indies Trading Company, in a cause of limitation of liability, alleges as follows:

First. That petitioner is a corporation duly organized under the laws of the State of New York, having its principal place of business at the city of New York, Borough of Brooklyn, in said State and within the Eastern District of New York, and was at the time hereinafter mentioned the owner of the American brig called the Jamaica.

Second. On the 9th day of November, 18—, the said brig sailed from the port of New York, having on board a large and valuable miscellaneous cargo, and bound on a trading voyage to various islands in the West Indies. At the time of the commencement of said voyage the said brig was stanch and seaworthy, with an experienced master and a full crew, and was in all respects properly manned and equipped for the said voyage.

Third. The said vessel on the 24th day of November, 18—, while in the prosecution of her said voyage, encountered a gale, which increased into a hurricane on the 25th of November, and the said brig was on that day driven ashore on the island of Cuba, where she now lies, practically a total wreck; and petitioner avers, on information and belief, that her value does not exceed the sum of \$50. Petitioner also avers that, by reason of the destruction of the said vessel, no freight was earned on her voyage, and there is now no pending freight, recovered or recoverable.

Fourth. The said stranding happened, and the loss, damage and injury occasioned thereby was incurred without the privity or knowledge of the petitioner, and without any fault or negligence on its part. Nevertheless an action at law has been begun against petitioner in the Supreme Court of the State of New York for Kings County, which is within this district, by Messrs. A. L. & Co. of No. 261 South Street, New York, who were the owners of certain cargo of said vessel lost in consequence of said stranding, and who claim to recover the sum of two thousand six hundred and four 63-100 dollars. The attorneys representing the above named plaintiffs are A. & B., Esqs., of No. 53 Wall Street, New York. Other claims have been made against the petitioner to recover for loss, etc., of cargo, which are as follows, and which are all the claims known to petitioner:

C. D. & Co., No. 261 Broad Street, New York,	. . .	\$ 201 36
E. F. & Co., No. 422 Wall Street, New York,	. . .	461 27
E. S., No. 621 Maiden Lane, New York,	. . .	1321 26

—and petitioner avers that the total amount of the claims against petitioner by reason of the losses occasioned by said stranding far exceed the value of petitioner's interest in said vessel, and her freight pending.

Fifth. Petitioner further avers on information and belief that there is no prior paramount lien on the said vessel, and that she had made no

voyage or trip since the voyage or trip on which the claims hereby sought to be limited arose.

Sixth. Petitioner desires to claim the benefits of the provisions of Sections 4283, 4284 and 4285 of the Revised Statutes of the United States, and the various acts amendatory thereof and supplemental thereto, and for that reason offers to surrender the said vessel as she now lies to a trustee to be appointed by this court, for the benefit of the above named claimants, or any others who may appear.

Seventh. All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore petitioner prays that this court will appoint a trustee to whom the said wreck of the brig Jamaica may be transferred, and that the court will also appoint a commissioner to receive proof of claims in accordance with the rules and practice of this court, and will issue a monition to all persons claiming damages by reason of any loss, damage or injury done, occasioned or incurred by reason of the said stranding, citing them to appear before the said commissioner at or before a time to be named in said writ and make proof of their respective claims; and to appear and answer on oath all and singular the premises, and that this court will also issue its injunction restraining the further prosecution of the above mentioned action of A. L. & Co. against petitioner, and further restraining the commencement hereafter of any suit, action or legal proceedings of any nature or description whatever against your petitioner, by reason of the said stranding and wreck, and that the court will adjudge and decree that petitioner on such surrender of said vessel be discharged from liability for any demand or claim whatsoever by reason of his ownership of said vessel or arising out of during said voyage, and that petitioner may have such other or further relief in the premises as may be just.

L. S. & D., Proctors for Petitioner.

(Verification as in Form No. 1.)

LIBEL OFFERING SURRENDER AND CONTESTING LIABILITY.

To the District Court of the United States for the Southern District of New York.

The libel and petition of John Doe and Richard Roe, owners of the steamtug Achilles, in a cause of limitation of liability, civil and maritime, alleges as follows:

First. That the libellants are residents of the city of New York, and are, and were at the times hereinafter mentioned, sole owners of the steamtug or vessel known as the Achilles, and that said steamtug is now within the harbor of New York, within this district and within the jurisdiction of this court.

Second. The said steamtug Achilles has been and is engaged in the business of towing vessels on the waters of the Hudson river, between this city and Albany and other places, making regular trips between Albany and New York, on an average of three per week.

Third. On the 9th day of May, 18—, the said tug Achilles had taken in tow six canal boats at New York to be taken to Albany. The said canal boats were on a hawser astern of the said tug, and were arranged in three tiers of two boats each, and the entire tow was properly made up, and the said steamtug was at the time staunch and seaworthy, and was properly manned and equipped.

Fourth. About 1 o'clock in the morning of the 10th of May, 18—, the tow had passed Peekskill, and was entering the lower end of that part of the river known as the Race, and was on the easterly side of the channel. The lights of the Achilles were at the time properly set and burning brightly, her master was at the wheel, and a competent lookout was stationed forward. The lights on the canal boats were also burning brightly and the entire tow was moving at the rate of about five miles per hour. At this time the lights of a steamboat, which proved to be the steamboat L., were seen almost dead ahead of the Achilles. The latter's helm was at once ported and one whistle blown, but no answering signal was given by the L., nor were her lights observed to alter. The Achilles then blew another single whistle, and this not being answered, an alarm signal was given, her helm put hard aport and her engines reversed; notwithstanding which the L. struck the forward tier of the tow of the Achilles, sinking one boat and badly damaging another, and injuring herself so that she had to be run ashore at once to keep her from sinking.

Fifth. The said collision was in no way caused by fault or negligence on the part of the master or crew of the said Achilles, and the loss, damage and injury thereby done, occasioned and incurred were without the privity or knowledge of the petitioners. But the fault of the said collision lay entirely with the said steamboat L. in that she was coming down on the easterly side of the channel, in that she had no proper lookout, in that she did not observe or heed the signals of the Achilles, in that she did not alter her helm or her speed before the collision, and in other respects which will be shown on the trial of this cause.

Sixth. Nevertheless certain persons have made claims against petitioners for losses arising out of the said collision, all of which claims, with the amounts thereof, and the names and addresses of the claimants, are as follows, viz.: The claim of

- | | |
|--|-----------|
| (1) A. B., of Haverstraw, N. Y., for loss of the canal boat Bessie, | \$3000 00 |
| (2) S. Insurance Co. No. 99 Pine St., New York, insurer of cargo on said canal boat, | 980 31 |
| (3) C. D., Albany, N. Y., damage to canal boat Middletown, | 861 32 |
| (4) T. Insurance Co. No. 12 Broadway, N. Y., insurer of cargo on said canal boat, | 1142 31 |
| (5) E. F. and others, River St., Troy, N. Y., owners of the steamboat L., an indefinite claim of damages, which it is stated may amount to | 5000 00 |

None of the above claimants has as yet actually begun suit against the Achilles or against petitioners.

Seventh. Petitioners aver that there was and is no freight pending by reason of the said trip in question, and on information and belief that the value of the said Achilles at the close of the said trip did not exceed the sum of \$6,000, and the amount of the above claims far exceeds the value of the interest of petitioners in said tug at the said time.

Eighth. Petitioners desire to claim the benefits of the provisions of Sections 4283, 4284 and 4285, of the Revised Statutes of the United States, and the various acts amendatory thereof and supplemental thereto, and in this proceeding, by reason of the facts heretofore set forth, to contest their liability and the liability of the said steamtug Achilles to any extent whatever for any and all loss, destruction, damage or injury done, occasioned or incurred by reason of the above collision, and to that end desire to surrender the said vessel during the pendency of this proceeding to a trustee to be appointed by this court.

Ninth. Petitioners further aver on information and belief that there is no lien on said Achilles prior or paramount to any lien which may have accrued by reason of the matters aforesaid, unless as hereinafter set forth. They also allege that the said vessel has made numerous trips between New York and Albany, in the regular prosecution of her towing business, since the said collision happened, upon one of which trips she was in collision with the steamtug African, and was damaged to the extent of about one hundred dollars. With this exception, her market value has not deteriorated since the time when the above accident occurred. The following liens or claims of liens have arisen on trips subsequent to the one in question:

(1) A claim of lien to the amount of \$900, made by A. B. and C. D. of No. 312 Broad St. N. Y., owners of the tug African, and alleged to have accrued by reason of the collision with the African referred to in this article.

(2) A lien for the sum of \$99.66 in favor of L. F. & Co., No. 461 West St. N. Y., ship carpenters, for repairs to the Achilles rendered necessary by the collision with the African, and of which specifications have been filed with the clerk of the city and county of New York.

(3) A claim of lien in the sum of \$103.28 made by M. N., whose residence is unknown to petitioners, formerly mate of the Achilles, for wages.

And petitioners further aver that the special fact on which the right to surrender the Achilles to a trustee, notwithstanding the fact that she has made trips or voyages subsequent to the one in question, is that at the termination of such voyage the amount of the claims against the Achilles was unknown to petitioners, and that petitioners now offer to pay or secure, outside and apart from this proceeding, by stipulation or in any manner ordered by the court, any liens which may have accrued against said Achilles by reason of any matter or thing not connected with the collision mentioned in articles third and fourth of this petition.

Tenth. All and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore petitioners pray that this court will make an order, on such terms as will be just to petitioners and to all persons having liens or

claims of liens, appointing a trustee to whom the said steamtug Achilles may be surrendered during the pendency of this proceeding, and that the court will also appoint a commissioner to receive proof of claims in accordance with the rules and practice of this court, and will issue a monition to all persons claiming damages by reason of any loss, damage or injury done, occasioned or incurred by reason of the said collision mentioned in articles third and fourth, citing them to appear before said commissioner at or before a time to be named in said writ, and make proof of their respective claims; and also to appear and answer upon oath all and singular the premises; and that this court will also issue its injunction, restraining the commencement of any and all actions, suits or legal proceedings of any kind arising out of the said collision against them or said tug Achilles, other than in the present proceeding, and that the court will adjudge that petitioners are not liable for any demand or claim whatever in consequence of the said collision, or if such liability ever existed, then that they be discharged therefrom by the surrender of the said tug Achilles, and that petitioners may have such other or further relief in the premises as may be just.

M. & N., Proctors for Petitioners.

(*Verification as in Form No. 1.*)

ORDER FOR APPRAISAL, ETC.

(*Caption, see page 651.*)

In the Matter of the Petition of A. B.,
 Owner of the Schooner Hattie L., for
 Limitation of Liability. }

On reading the libel and petition heretofore filed, of A. B., owner of the schooner Hattie L., praying for a limitation of his liability and for an appraisal of the value of his interest in said schooner and her freight pending, and on reading and filing petitioner's notice of motion for the appointment of an appraiser, with proof of due service thereof on J. N., E. F. & Co., and J. D., mentioned in said libel as making claims, and no one appearing to oppose, it is now, on motion of K. & L., proctors for petitioner,

Ordered, that E. F., be and he hereby is appointed appraiser to appraise the amount of the value of the interest of said A. B. in the schooner Hattie L. and her freight pending; and it is further

Ordered, that four days' notice of the proceedings to appraise the said vessel and freight be given to the above named claimants, or to their respective attorneys or proctors, and to any other parties who may have filed claims against said petitioner or said schooner by reason of the matters and things in the libel alleged; and it is further

Ordered, that the amount of the value of petitioner's said interest in said schooner and freight, when ascertained, be paid into the registry of this court by petitioner to abide the event of this proceeding; or, at the

option of petitioner, that he file a stipulation, in such appraised amount, with interest from the date of the close of the voyage described in the petition herein, providing for the payment of such amount as is ordered by the court, not exceeding the amount of the said stipulation, and with sureties to be approved by said claimants or their proctors or by the court; and it is further

Ordered, that upon such payment into court or the filing of a stipulation as aforesaid, the said schooner Hattie L. be released from the seizure under the processes in said libel and petition referred to, and restored to the petitioner.

ORDER FOR TRANSFER TO TRUSTEE.

(Caption, see page 651.)

District Court of the United States, Southern District of New York.

In the Matter of the Petition of the
T. Steamship Company, Owner of the
Steamship B., for Limitation of Liability,
etc. }

On reading and filing the libel and petition of the T. Steamship Company, owner of the steamship B., her engines, boilers, etc., verified May 15, 1900, showing that the said libellant and petitioner has been sued as such owner by various persons claiming damages for loss and injury alleged to have been caused to them by the collision between the said steamship B. and the ship C. on the high seas, in which collision the said steamship B. was sunk and became a total loss, and that such loss, damage or injury was done, occasioned and incurred without the privity or knowledge of such owner, and that the said petitioner desires to claim the benefit of limitation of liability provided by the laws of the United States, and also to contest its liability and the liability of said vessel for said loss, destruction, damage and injury, independently of the limitation of liability claimed under said laws of the United States, and the said libel and petition also stating the facts and circumstances on which such limitation of liability is claimed, and praying proper relief in the premises in that behalf, and the said owner having elected to make a transfer of its interest in said vessel and freight as hereinafter provided:

It is hereby ordered, in conformity with the said laws of the United States and the rules of the Supreme Court of the United States made in pursuance thereof, that the said libellant and petitioner, the T. Steamship Company, transfer its interest in the said steamship B. and her pending freight for the said voyage, for the benefit of all claimants to S. H. L., Esq., of the city of New York, who is hereby appointed, pursuant to the provisions of the laws of the United States in such case made and provided, to act as trustee for all persons who prove to be legally entitled thereto.

Dated New York, May 15th, 19—.

A. B., U. S. D. J.

APPRAISER'S REPORT.

United States District Court, Southern District of New York.

In the Matter of the Petition of O. D. }
Steamship Company for Limitation of }
Liability, etc. }

In pursuance of an order of this Court, dated May 19th, 1903, whereby it was referred to the undersigned, one of the Commissioners of this Court, as appraiser, to ascertain and appraise and report to this Court the value of the interest of the petitioner in the steamship H. and in her freight for the voyage in the petition mentioned, I, H. W. G., Commissioner, do hereby report as follows:—

I have been attended by the proctors for the petitioner and for the C. Steamship Company, owner of the steamship S.

The hearing was held before me on the second day of June, 1903, and notice thereof was given by mail to the persons named in the order, as is shown by the affidavit of G. R., marked Schedule "A;" a copy of the notice is set out in the minutes and the various Schedules herein mentioned are attached thereto.

In pursuance of such notice, I have received communications from E. B. C., marked Schedule "B," from R. B. L., marked Schedule "C," and from L. C. G., in behalf of M. A. S., marked Schedule "D." Admission of the service of the notice upon Messrs. R., B. & W., proctors for the steamship S. was also presented to me, marked Schedule "E." No further communications have been received by me from any of the persons named in the order, nor did any such persons appear before me.

The H., together with another steamer for the service of the petitioner, came into its service in April, 1899, a new ship. Her cost as delivered from the builders, was \$375,000; the sum of \$25,048 was expended by the petitioners, for fittings of the vessel, so that the cost of the H. in April, 1899, was the sum of \$400,048.

The petitioner proved by three witnesses, two of them unconnected with it, that the sound value of the steamer on May 5, 1903, was the sum of \$320,000. All of these witnesses took as a basis the cost of the steamer, and allowed a certain amount for depreciation year by year. It was shown that beginning on July 1st, 1901, petitioner adopted the system of writing-off a certain percentage of the values of its vessels year by year for depreciation, but that this was not done in 1900. The sound value of the vessel, as shown by the petitioner's books on July 1st, 1901, was \$381,503.05; her sound value on July 1st, 1902, was \$358,602.87, and it was the intention of the Company to write off a further six per cent. together with the cost of certain repairs, on the first of July, 1903. This would make the sound value, according to the petitioner's calculation, about \$320,000, a valuation also fixed by two disinterested witnesses, who base their estimate, one upon book value, less present repairs, and the other upon cost, making allowance for depreciation. In my judgment the fact that the petitioner's book valuation as of July 1st next on the basis

of 6% depreciation would exceed \$320,000, should not be conclusive, especially in view of Mr. W.'s testimony that the Company would also deduct the cost of the extraordinary repairs now making.

I therefore find that the sound value of the H. at the time of her collision, May 5, 1903, was..... \$320,000.00
 From which I deduct the cost of repairs and demurrage..... \$ 5,000.00
 Making the value of the vessel itself after the collision..... \$315,000.00
 To which add pending freight,..... \$ 2,764.33
 Passage money,..... \$ 609.45
 Making the total value of the interest of the petitioner in the _____
 vessel and her pending freight,..... \$318,873.78
 All of which is respectfully submitted.

(Sgd.) H. W. G., Commissioner.

Dated, New York, June 4, 1903.

TRANSFER TO TRUSTEE.

District Court of the United States, Southern District of New York.

In the Matter of the Petition of the T. }
 Steamship Company, owner of the Steam- }
 ship B., for Limitation of Liability.

Whereas the above named, the T. Steamship Company, owner of the steamship B., her engines, boilers, etc., has heretofore presented its libel and petition to the District Court of the United States for the Southern District of New York, claiming for the reasons and because of the circumstances therein mentioned and set forth the benefit of limitation of liability of said libellant and petitioner pursuant to the laws of the United States, and praying that the said Court would appoint a trustee pursuant to the said laws of the United States and make an order for the transfer by the said libellant and petitioner of its interest in the said steamship B. and her freight for the benefit of all persons who may appear as claimants against the said libellant and petitioner because of the collision and subsequent loss of the said steamship B. as in said libel and petition stated;

And whereas, upon the libel and petition aforesaid an order has been heretofore made in the above-entitled proceeding, directing the said libellant and petitioner, the T. Steamship Company, to transfer its interest in the said steamship B. and her freight for the voyage mentioned in the said libel and petition to S. H. L., Esq., of the City of New York, appointed in and by the said order trustee for the benefit of any person or persons who may have claims against the said libellant and petitioner by reason of the collision and loss of the said steamship B., as in the said libel and petition set forth;

Now, therefore, this indenture witnesseth, that the said The T. Steamship Company, in obedience to the said order and in consideration of the

premises aforesaid, has conveyed, assigned, transferred and delivered over, and by these presents does convey, assign, transfer and deliver over to the said S. H. L., trustee as aforesaid, all and singular the interest of the said petitioner in the said steamship B., her engines, tackle, apparel and furniture and in the freight of the said steamship for the voyage in which the said steamship was lost as aforesaid;

To have and to hold the same unto the said S. H. L., Esq., as such trustee as aforesaid and to his successors and assigns, subject to the order, control and direction of the District Court of the United States for the Southern District of New York.

In witness whereof, the said The T. Steamship Company has caused these presents to be signed by its General Agent for the United States and Canada, having full authority in the premises, this 15th day of May, in the year of our Lord one thousand and nine hundred.

The T. Steamship Company.

E. B.

[SEAL]

General Agent for U. S. and Canada.

Southern District of New York, ss:

On this 15th day of May, 1900, before me personally appeared E. B., General Agent for the United States and Canada of the T. Steamship Company, with whom I am personally acquainted and known to me to be such General Agent, who being by me duly sworn said that he resides at No. West Street in the City of New York, in said State of New York, and that he signed and acknowledged the foregoing instrument as the act and deed of the said The T. Steamship Company. He further deposes and says that the reason he makes this verification is because the petitioner is a foreign corporation, and that he has full power and authority to act on it behalf in this matter.

F. K., Notary Public, N. Y. Co.

ORDER FOR PAYMENT INTO COURT OR FOR STIPULATION.

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms, Borough of Manhattan, City of New York, on the 16th day of June, 1903.

Present—Hon. G. B. A., District Judge.

In the Matter of the Petition of the O. D. }
 Steamship Company for limitation of }
 liability, as owners of the Steamship H. }

On reading and filing the report of H. W. G., Esq., to whom it was referred to ascertain and appraise and report to this Court the value of the interest of the petitioner in the steamship H. and in her freight for the voyage in the petition mentioned, and due notice of said appraisal,

pursuant to an order of this Court, dated May 19th, 19—, having been given to the persons named in said order, and the value of the interest of said petitioner having been reported to be the sum of three hundred and eighteen thousand three hundred and seventy-three and 78/100 dollars (\$318,373.78); and the time to file exceptions to said report having expired, and no exceptions having been filed, now on motion of W., P. & B., proctors for the petitioner, it is

Ordered, that the petitioner, the O. D. Steamship Company, pay the sum of three hundred and eighteen thousand three hundred and seventy-three and 78/100 dollars (\$318,373.78) into the Registry of this Court, or give a stipulation, with sufficient sureties, for the payment thereof into Court whenever the same shall be ordered.

G. B. A., U. S. D. J.

STIPULATION FOR APPRAISED VALUE.

United States District Court for the Southern District of New York.

Whereas a libel and petition was filed on the 4th day of May, 18—, by John L. Williamson and others, owners of the schooner Talisman, praying for a limitation of their liability on account of any loss, damage or injury arising out of a certain collision between said schooner Talisman and the steamer Daylight, and the value of the interest of petitioners in said schooner Talisman and her freight pending has been duly fixed at the sum of twenty-three hundred dollars for the said schooner, and four hundred and eighty-one 92-100 dollars for said freight, in all twenty-seven hundred and eighty-one 92-100 dollars, as appears from the report of the appraiser, now on file in this court; and the parties hereto hereby consenting and agreeing that, in case of default or contumacy on the part of the petitioners or their sureties, execution for the above appraised amount, with interest thereon from this date, may issue against their goods, chattels and lands:

Now, therefore, the condition of this stipulation is such that if the petitioners herein and A. S., residing at — Van Brunt St., in the city of New York, and by occupation a ship broker, and P. M. P., residing at — East 63d St., in the city of New York, and by occupation a stevedore, the stipulators undersigned, shall abide by all orders of the court, interlocutory or final, and pay into court the above sum of twenty-seven hundred and eighty one 92/100 dollars, with interest, whenever ordered by this court, or by any appellate court if an appeal intervene, then this stipulation to be void, otherwise to remain in full force and virtue.

Taken and acknowledged this 29th
day of May 18—, before me,

JOHN L. WILLIAMSON.
A. S.
P. M. P.

(Justification.)

ORDER FOR MONITION.

At a Stated Term of the United States District Court for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, City of New York, on the 24th day of June, 19—.

Present—Hon. G. B. A., District Judge.

In the Matter of the Petition of the O. D. Steamship Company as owner of the Steamship H., for Limitation of Liability. }

On reading the libel and petition herein of the above named O. D. Steamship Company, praying for limitation of its liability as owner of the steamship H. by reason of a certain collision with the steamship S. on May 5, 19—, and it appearing that theretofore the steamship H. had been libelled in this Court by the C. Steamship Company, owner of the steamship S., for damages resulting from said collision; and an order having been entered herein on the 19th day of May, 19—, whereby H. W. G., Esq., was appointed to ascertain and appraise and report to this Court the value of the interest of the petitioner in the steamship H. and in her freight for the voyage in the petition mentioned, and due notice of the proceedings to appraise the said steamship H. having been given, and said appraisal having been duly had and said appraiser having duly filed his report herein, dated June 4, 19—, wherein he finds the value of the interest of the petitioner in the said steamship H. and her pending freight to be the sum of three hundred and eighteen thousand three hundred and seventy-three and 78-100 (\$318,373.78) dollars, and no exceptions to said report having been filed and said report having been confirmed, and an order of this Court, dated June 16th, 19—, having been made and entered herein, directing said petitioner to pay the sum of three hundred and eighteen thousand three hundred and seventy-three and 78-100 (\$318,373.78) dollars into the Registry of this Court, or to give a stipulation with sufficient sureties for the payment thereof into Court whenever the same shall be ordered, and said petitioner having filed in the office of the Clerk of the Court a stipulation in the sum aforesaid with the American Surety Company of New York, as surety, which stipulation has been duly approved by this Court:

Now, on motion of W., P. & B., proctors for said petitioner, it is

Ordered, that a monition issue out of and under the seal of this Court against all persons claiming damages for any and all loss, destruction, damage or injury caused by or resulting from the collision set forth in the said libel and petition herein and occurring between the said steamship H. and the steamship S., citing them and each of them to appear before the Court and make due proof of their respective claims, on or before the 6th day of October, 19—, at 10:30 o'clock a. m. of that day, and T. A., Esq., is hereby appointed Commissioner before whom proof of all claims which may be presented pursuant to said monition shall be made; subject

to the right of any person or persons interested to controvert or question the same; and it is further

Ordered, that public notice of said monition be given by publication thereof in *The Mail and Express*, a newspaper published in the City of New York, once a day for fourteen days, and thereafter once a week until the return day of said monition, and that the first publication of said monition be at least three months before said return day. And it is further

Ordered, that a copy of said monition and of this order be served at least thirty days before the said return day of said monition upon the following proctors and attorneys for parties claiming damages by reason of the said collision in said libel and petition set forth: viz., Messrs. R., B. & W., Proctors for the C. Steamship Company; Messrs. B., N., J. & M., Proctors for certain owners of cargo on S. S. S.; Messrs. H., H. & B., Proctors for J. H. T.; S. B., Esq., Proctor for M., P. & S. J.; F. D. W., Winston, North Carolina, Proctor or attorney for E. J. Estate. And it is further

Ordered, that the further prosecution of the aforesaid libel in this Court by the C. Steamship Company against the steamship H., &c., and the prosecution of any and all other suits, actions and proceedings of any nature or description against the said steamship H. or the said O. D. Steamship Company in respect of any claim for damages for loss, destruction, damage or injury on account of said collision on May 5th, 19—, between the said steamship H. and the said steamship S., be, and the same hereby is, restrained; and it is further

Ordered, that the service of this order as a restraining order be made within this the Southern District of New York, in the usual manner, and in any other District of the United States by delivery, by the Marshal of the United States for such District, of a certified copy of this order to the person or persons to be restrained, or their attorneys or proctors acting in their behalf.

G. B. A., U. S. D. J.

MONITION.

The President of the United States of America to the Marshal of the United States for the Southern District of New York, greeting:

Whereas, a libel and petition were filed in the District Court of the United States for the Southern District of New York, on the 15th day of May, 19—, by the O. D. Steamship Company, as owner of the steamship H., her engines, boilers, etc., and her prepaid freight and passage moneys, praying for a limitation of its liability concerning the loss, damage or injury occasioned by the collision between said steamship H. and the steamship S., on or about the 5th day of May, 19—, for the reasons and causes in said libel and petition mentioned, and praying that a monition of the said Court in that behalf be issued, and that all persons claiming damages for any such loss, damage or injury may be thereby cited to appear be-

fore the said Court and make due proof of their respective claims, and all proceedings being had, that if it shall appear that the said petitioners are not liable for any such loss, damage or injury, it may be so finally decreed by this Court;

And whereas, the value of the interest of the said owner in the steamship H., and her freight then pending and her passage moneys has been appraised at the sum of three hundred and eighteen thousand three hundred and seventy-three and 78-100 (\$318,373.78) dollars and a stipulation for said appraised value, duly approved, has been filed in this Court, and the said Court has ordered that a monition issue against all persons claiming damage for any loss, destruction, damage or injury done, occasioned or incurred by said collision, citing them to appear and make due proof of their respective claims;

You are, therefore, commanded to cite all persons claiming damages for any loss, destruction, damage or injury occasioned by said collision to appear before said Court and make due proof of their respective claims, before T. A., Esq., a United States Commissioner, at his office, in the United States Court and P. O. Building, in the Borough of Manhattan, City of New York, on or before the 6th day of October, 19—, at 10:30 o'clock in the forenoon, and you are also commanded to cite such claimants to appear and answer the allegations of the libel and petition herein, on or before said last named date, or within such further time as this Court may grant, and to have and receive such relief as may be due.

And what you have done in the premises, do you then make return to this Court, together with this writ.

Witness the Honorable G. B. A. and the Honorable G. C. H., Judges of the District Court of the United States for the Southern District of New York, this 27th day of June, 19—, and of the Independence of the United States the one hundred and —

T. A., Clerk.

[SEAL.]

CITATION.

To Whom it may Concern.

United States of America, Southern District of New York, ss.

Whereas, a libel and petition was filed in the District Court of the United States for the Southern District of New York, on the 20th day of January, 19—, by the O. Navigation Company, owner of the steamship A., her engines, boilers, apparel, tackle, furniture, etc., for limitation of its liability for all loss, destruction, damage and injury caused by a collision between said vessel and the steamboat C., in the North or Hudson River of New York, on October 31st, 19—; and

Whereas, said petitioner and libellant has given a stipulation to abide by and pay the moneys awarded by the final decree rendered by the

District Court or by the Appellate Court, if any appeal intervene, to the amount of \$210,255.33 and interest, the appraised value of said steamboat and her pending freight;

Now, therefore, in pursuance of a monition issued by the said Court to me directed and delivered, I do hereby cite all persons claiming damages for any and all loss, destruction, damage or injury occasioned by the said collision, to file and make due proof of their respective claims before T. A., Esq., United States Commissioner, at his office in the Federal Building, in the City of New York, on or before the 1st day of May, 19—, at 11 A. M., and also to appear before said Court in said building, on the 1st day of May, 19—, at 11 A. M., and answer said petition and libel; otherwise they will be defaulted and debarred from participation in this suit.

Dated New York, Jany. 30, 19—.

W. H.,
U. S. Marshal for the Southern
District of New York.

CLAIM OF DAMAGES.

District Court of the United States, Southern District of New York.

In the Matter of the Petition of the O. D. }
Steamship Company, as owner of the }
steamship H., for Limitation of Liability. }

And now comes the C. Steamship Company in the above matter, and, as bailee of the cargo and of the baggage and personal effects of the passengers and crew of the steamship S., makes claim against the above named O. D. Steamship Company, and the said steamship H., as follows:

The C. Steamship Company is a corporation created by and existing under the laws of the State of Delaware, and was lately the owner of the steamship S., her engines, etc., which steamship was on the 5th day of May, 19—, and while owned by this claimant, on a voyage from Norfolk, Virginia, to Philadelphia, Pennsylvania; and on said date, and on the high seas, and not far from the Winter Quarter Lightship, and at about 4.45 A. M., came in collision with the above named steamship H., as the result whereof the said steamship S. sank and was totally lost, together with her said cargo and the baggage and effects of the passengers and crew of said S.

That said collision was caused by and contributed to by the fault and negligence of those in charge of the said steamship H.

That said C. Steamship Company was at the time of said sinking, the bailee of and lawfully in possession as such bailee of the cargo laden upon said S. and of the baggage of the passengers and the effects of the crew of said S.; and that, therefore, for such of the cargo, baggage and effects

as to the knowledge of said C. Steamship Company are not otherwise represented in the above entitled proceeding, the C. Steamship Company makes claim as first above set forth, and for the following items of loss:

<i>Cargo Owner, Items.</i>	<i>Amount.</i>
Export and Commission Company, 2 bales Domestics	\$131.28
W. H. Co., 2 crates Eggs	43.75
(Etc., etc. A Copy of the Manifest.)	
Total	\$17,328.82

And on information and belief the said C. Steamship Company shows that as far as it can ascertain at present the value of other cargo, the particulars of which are not yet known to it, which cargo was lost as aforesaid, and of which it was the bailee, amounts to the sum of \$5,000.00.

And on like information and belief the C. Steamship Company shows that the value of the baggage of passengers and effects of the crew so as aforesaid in its possession as bailee at the time of said sinking, amounts to the sum of \$2,000.00.

Wherefore the said C. Steamship Company as bailee as aforesaid presents its claim for the aggregate amount of \$24,328.82 with lawful interest thereon.

R., B. & W.,
Proctors for C. Steamship Company, bailee.

To T. A., Esq.,
Commissioner.
Messrs. W., P. & B.,
Proctors for O. D. Steamship Co.

(Verification.)

CLAIM OF DAMAGE.

District Court of the United States, Southern District of New York.

In the Matter of the Petition of the O. D. }
Steamship Company for Limitation of }
Liability, as owners of the steamship H. }

And now comes the C. Steamship Company in the above matter and makes claim against the above named O. D. Steamship Company and the said steamship H., as follows:

The C. Steamship Company is a Corporation created by and existing under the laws of the State of Delaware, and was lately the owner of the steamship S., her engines, etc.

That on the 5th day of May, 19—, the said steamship S. was on a voyage from Norfolk, Va., to Philadelphia, Pa., and on said date and on the high seas, she came in collision with the above named steamship H.,

as the result of which collision the said steamship S. sank and was totally lost, with great loss also of life and property.

That said collision was caused by and contributed to by the fault and negligence of those in charge of said steamship H.

That by reason of the sinking and total loss of said steamship S., her engines, etc., the C. Steamship Company has sustained damages in the sum of \$90,000 for which amount it makes claim against the O. D. Steamship Company, and the Steamship H.

That sundry suits have been begun, and numerous claims made, against the C. Steamship Company for damages sustained through loss of life, personal injuries and loss of cargo by reason of the sinking of said steamship S. It is not now possible, and will not be possible before the legal adjudication thereof to state the amount of such claims allowed or proved against the said C. Steamship Company; but said C. Steamship Company makes further claim in addition to its damages for the loss of its steamship S. and makes such claim against the O. D. Steamship Company and said steamship H. for all such sums as may be allowed or adjudged against it, and hereby gives notice of its intent to hold the steamship H. and the O. D. Steamship Company responsible for all damages which it may sustain by reason of such allowance and adjudication of claims against it, and for all moneys which it may be called upon to pay to other persons or corporations for loss or injuries arising from said collision and consequent sinking of said S.

THE C. STEAMSHIP CO.,
By T. C., Secretary.

Dated New York City, Sept. 21, 19—.

(Verification.)

CLAIM OF DAMAGES FOR DEATH.

United States District Court, Southern District of New York.

In the Matter of the Libel and Petition of
the O. D. Steamship Co., owner of the
Steamer H. for Limitation of Liability. }

District of Delaware, State of Delaware, County of Sussex, ss.

A. L. J., being duly sworn, says: I am a resident of Trinity, Sussex County, Delaware, and the executor of the last will and testament of E. S. G.

On May 4th, 19—, the said E. S. G., then a resident of Sussex County, Delaware, was chief officer on the steamship S., at the time of her collision with the steamship H., set forth in the libel and petition. By reason of the said collision, and as I am informed and believe, through the fault of the said petitioner, the O. D. Steamship Co., or its servants or agents in charge of the said steamship H., and without fault on his part, the said E. S. G. was killed.

I have duly qualified as the executor of the last will and testament of

the said E. S. G. and have been granted letters testamentary. Under and by virtue of the statute of the State of Delaware in such case made and provided, I am entitled to maintain an action to recover damages for the death thus occasioned, and hereby claim \$20,000 as the amount of such damages, no part of which has been paid.

Sworn to, etc., etc.

A. L. J.

CLAIM FOR VALUE OF SUPPLIES.

United States District Court, Southern District of New York.

In the matter of the petition of S. K., owner
of the Bark Kate, for Limitation of Li-
ability. }

Southern District of New York, ss.

Job Latham, being duly sworn, says that he is a ship carpenter, residing at W. 18th St., New York, and having his place of business at South St., New York.

That on various dates between the 1st day of June, 18—, and the 13th day of March, 18—, at the request of the master of the bark Kate, he furnished materials to and for the said bark, and rendered services to him, the reasonable value of which materials and services is the sum of \$1,716.25.

That on the 15th day of March, 18—, he received on account of said indebtedness the sum of \$500 on account, leaving \$1,216.25 still due and unpaid.

That annexed hereto is a bill of particulars, giving the respective dates on which the said services were rendered and materials furnished, and the amounts charged for each item thereof. That said materials were furnished on the credit of the said vessel, which was a foreign vessel, and that deponent has a lien on said bark therefor.

Sworn to, etc.

JOB LATHAM.

C. & D.,

Proctors for Claimant.

(Annex Bill of Particulars.)

OBJECTION TO CLAIM FILED WITH COMMISSIONER.

United States District Court, Southern District of New York.

In the matter of the petition of S. K.,
Owner of the Bark Kate, for Limitation
of Liability. }

SIRS:—You will please take notice that James Lot, a creditor, having filed a claim against the fund in the registry of this court in the above entitled proceeding, hereby objects to the claim heretofore filed with the commissioner in this proceeding by Job Latham, for the sum of \$1,216.25 for services rendered and materials furnished to the said bark Kate, on the

ground that the said bark is a domestic vessel, and no lien exists against the said vessel, or the fund, for the sum of \$1,216.25, or for any part thereof, in favor of the said Job Latham, and also, on the ground that the fund is insufficient to pay all creditors, and the claim of James Lot is prior in point of law to the claim of the said Job Latham.

Dated New York, May 1, 18—.

Yours,

A. & B.,

Proctors for James Lot.

To S. H. L., Esq.,

Commissioner.

C. & D., Esqs.,

Proctors for Job Latham.

REPORT OF COMMISSIONER ON CLAIMS.

United States District Court, Southern District of New York.

In the Matter of the Libel and Petition
of The O. D. Steamship Company, Owner
of the steamship H., for Limitation of
Liability. }

To the District Court of the United States for the Southern District of New York:

I, T. A., the Commissioner named in the order of the Court made and entered in this proceeding, and bearing date the 27th day of June, 19—, and before whom the claims of all persons for any and all loss, destruction, damage or injury, caused by or resulting from the collision set forth in the libel and a petition herein, were required to be presented on or before the 6th day of October, 19—, do respectfully report that three classes of claims have been presented to me, viz.:

1. Claims for damages resulting from death.
2. Claims for personal injuries and loss of personal effects.
3. Claims for loss of and damage to property.

Of the first class, for damages resulting from death, I have received four claims, viz.:

That of S. B. K., administrator, etc., of the estate of M. E. J., for damages resulting from the death of the said M. E. J.	\$ 2,749.00
That of P. G., administrator of the estate of A. G., deceased, for damages resulting from the death of A. G.	10,200.00
That of A. L. J., as executor, etc., of the last will and testament of E. S. G., deceased, for damages re- sulting from the death of said E. S. G.	20,000.00
That of S. T. M., as executor of the estate of W. M., deceased, for damages resulting from the death of said W. M.	15,000.00
Making a total of	\$47,949.00

ORDER FOR SALE ON TRUSTEE'S PETITION.

(Caption, see page 651.)

In the Matter of the Petition of the N. }
 Transportation Company, Owners of the }
 Steamboat S.

On reading and filing the petition of J. A. O., trustee in the above entitled matter, verified on the 31st day of July, 19—, and upon all the papers and proceedings had herein, and it appearing necessary and proper that the prayer of said petitioner should be granted,

It is hereby Ordered, that the said trustee be and he is hereby authorized and empowered to cause the wreck of the said steamboat S., her engines, tackle, apparel and furniture, to be sold as they lie by a sale at public auction, in the city of New York, to the highest bidder for cash, at such time and place as shall to the said trustee seem to be most advantageous to all parties interested therein, and to execute to the purchaser at such sale such bills of sale, assignments and transfers as may be suitable and proper to convey the same, and all his right, title and interest to such purchaser or purchasers.

And it is further ordered, that notice of such sale be given by publication thereof three times each in the New York Commercial Advertiser, Journal of Commerce, and the New York Times and Evening Post.

And it is further ordered, that any and all parties hereto or interested in said steamboat have leave to bid and become purchasers of such property at such sale.

 NOTICE OF SALE.

Notice is hereby given, pursuant to an order made the 31st day of July, 19—, by the Hon. W. G. C., Judge of the District Court of the United States for the Southern District of New York, that I, the undersigned, duly appointed trustee, under the provisions of sections 4283, 4284 and 4285 of the Revised Statutes of the United States, will sell at public auction to the highest bidder for cash, on Saturday, August 7th, 1880, at 1 o'clock in the afternoon of that day, at pier —, Erie Basin, in the city of New York, the wreck of the steamboat S., her engines, tackle, apparel and furniture, as it now lies at said place.

Dated New York, August 3, 19—.

J. A. O., Trustee.

 TRUSTEE'S REPORT OF SALE.

District Court of the United States for the Southern District of New York.

In the Matter of the Petition of the N. }
 Transportation Company, Owners of the }
 Steamboat S.

To the District Court of the United States for the Southern District of New York.

I, the undersigned, heretofore appointed trustee in this proceeding, by

an order duly made and entered herein, bearing date the 31st day of July, 19—, do respectfully report:

That the petitioner named in the said petition duly transferred its interest in the said steamboat S., her engines, tackle, apparel and furniture, to me, as trustee, pursuant to order; that on my petition duly presented to the court for that purpose, an order was made and entered on the 31st day of July 19—, authorizing me to sell said steamboat at public auction after giving due notice of the time and place of sale.

That notice of such sale was duly given by publication thereof for three days previous thereto, in the New York Commercial Advertiser and the Journal of Commerce, The New York Times and the Evening Post, newspapers published in the city of New York, and by the service of said notice on L. C. D. Esq., attorney for J. R., administrator, etc., of B. R. and K. R., deceased; A. M., administratrix of D. M., deceased; M. F., administratrix of B. F., deceased; L. R., K. S., and C. S., parties plaintiff in the suits against the said petitioner mentioned in said petition, as appears by the annexed affidavit of W. H. H. and written admission of such service signed by said J. W., Esq.

That at the time and place mentioned in the said notice of sale, to wit, on the seventh day of August, instant, I sold the wreck of said steamboat S., her engines, tackle, etc., at public auction, to C. H. G., the highest bidder at said sale, for the sum of fourteen hundred and ten dollars. The bill of sale for the said property sold, as aforesaid, was executed and the said purchase price was duly paid to me on the date aforesaid.

Out of the proceeds so realized from said sale, I have paid the auctioneer's fees and charges, amounting to the sum of twenty-five dollars.

I have also paid for the publication of the notice of said sale as aforesaid the sum of twenty-eight 62-100 dollars. Vouchers for all of said payments are hereto annexed.

I have retained for my costs and charges on said sale the sum of one hundred dollars, leaving a balance of twelve hundred and fifty-six 38-100 dollars in my hands as trustee, subject to the further order and direction of the court.

All of which is respectfully submitted.
Dated New York, August 12th, 19—.

J. A. O., Trustee.

STATEMENT.

Proceeds of sale	\$1,410
Expenses of sale—	
Auctioneer's fees	\$ 25.00
Publication ..	28.62
Trustee's fees	100.00 153.62

Balance remaining in hands of Trustee	\$1,256.38
Dated August 12th, 19—	

J. A. O., Trustee.

ORDER CONFIRMING TRUSTEE'S REPORT...

(Caption, see page 651.)

In the Matter of the Petition of the N. }
 Transportation Company, Owner of the }
 Steamboat S.

Upon reading and filing the report of J. A. O., Esq., trustee, bearing date the 12th day of August, 19—, and on motion of S., B. and L., proctors for petitioner,

It is hereby ordered that said report of said J. A. O., Esq., trustee, be and the same hereby is in all respects approved, and that the sale in said report mentioned made by said trustee on the 7th day of August, 19—, be and the same hereby is ratified and confirmed.

INTERLOCUTORY DECREE.

At a Stated Term of the United States District Court, for the Southern District of New York, held at the Court Rooms in the United States Court in the Post Office Building in the Borough of Manhattan and City of New York on the 14th day of September, 19—.

Present—Honorable A. B., District Judge.

In the Matter of the Petition of the Q. }
 Steamship Company as owner of the }
 Steamship A., for Limitation of Liability.

A libel and petition having been filed herein on the twentieth day of January, 19—, by the Q. Steamship Company, under the provisions of Secs. 4283 to 4285 of the Revised Statutes of the United States, and the several acts and statutes amendatory thereof and supplementary thereto, for the limitation of its liability for loss, destruction, damage and injury, occasioned by or resulting from, or in connection with a collision of the said steamship A. with the steam ferryboat C. on the 31st day of October, 19—; and

The said Q. Steamship Company having also contested any and all liability resulting from or in connection with said collision, independently of the limitation of liability so claimed as aforesaid; and having, pursuant to order of this Court, filed herein a stipulation for the value of the said steamship A. in the sum of \$210,255.33 for the benefit of all persons awarded damages by reason of said collision; and

This Court having heretofore, to wit, on or about the 29th day of January, 19—, issued a monition against all persons claiming damages for any loss, destruction, damage or injury occasioned by said collision, requiring such persons to appear before this Court and make due proof of their respective claims before T. A., Esquire, a Commissioner of this Court,

at his office in the Post Office Building, New York City, on or before the 1st day of May, 19—; and

Public notice of said monition having been duly given, as required by law and the practice of this Court, and said commissioner having duly made and filed his report, bearing date the 1st day of May, 19—, wherein and whereby it appears that certain claims there enumerated, and no others, have been presented pursuant to said monition, and

The matter having come on to be heard by the Court upon the libel and petition and the answers thereto of the P. Company, J. B., as administratrix, and M. E. W., as administratrix, etc., and J. S. C., and having been argued and submitted by J. T. D., Esq., for the O. Steamship Company, E. F. W., Esq., for the P. Company, and J. J. M., Esq., for certain other claimants, and due deliberation having been had,

Now, on motion of Messrs. R., B. & W., proctors for the P. Company, it is

Ordered, adjudged and decreed that the said petitioner, the O. Steamship Company, is not entitled to exemption from all liability as claimed by it in its petition, but that it is entitled to limitation of its liability as provided by an Act of Congress approved March 3, 1851, and embodied in Sections 4283 to 4285 of the Revised Statutes of the United States, and the various acts and statutes amendatory thereof and supplemental thereto; And it is further

Ordered, that this cause be and it hereby is referred back to said T. A., Esquire, U. S. Commissioner, to take further proofs that may be offered as to the amount, validity and priority of all claims to which objections and defenses have been filed, and to report thereon to this Court with the evidence taken before him in respect of the claims for death, and with his opinion in addition as respects personal injuries, loss of personal effects or other property, and the damages sustained by the owners of the ferryboat C., with all convenient speed; hearings before said Commissioner to be brought on by any party in interest by notice of four days.

A. B.,
U. S. District Judge.

COMMISSIONER'S REPORT OF CLAIMS PROVEN.

United States District Court, Southern District of New York.

Is the Matter of the Petition of the O. Steamship Company, as owner of the Steamship A., etc., for Limitation of Liability. }

To the United States District Court, for the Southern District of New York:

I, T. A., United States Commissioner, to whom it was referred by the interlocutory decree, filed in the above-entitled proceedings, on the 14th day of September, 19—, to take proof as to the amount, validity and

priority of all claims to which objections and defences have been filed, and to report thereon to this Court, with the evidence taken as respects the claims for personal injuries or death, and with my opinion in addition, as respects personal injuries, loss of personal effects or other property, and the damages sustained by the owners of the ferryboat C., do report as follows:

First. Claims for loss of or damage to baggage or other property:
Claim of O. W. This claim is for the loss of personal effects. I find their value to have been as follows:

Overcoat	\$40.00
Suit	35.00
Shirt Studs	10.00
Hat	5.00
Shoes	5.00
Linen and underwear	10.00
Cuff buttons	15.00
Card case and contents	7.50
Also one silver watch, which the evidence shows to have been in use about 15 years. I find its value to have been	25.00
<hr/>	
Making a total of	\$152.50

Claim of H. B. This claim is for the loss of certain wearing apparel and a silver watch, which are conceded to have been worth..\$65.00

Second. Claim of the P. Company for loss of steam ferryboat C., her tackle, etc.

The C. was sunk by the collision set forth in the petition herein, and subsequently raised and sold for \$3,900, a sum far less than the cost of raising her. By its claim, bearing date March 20, 19—, the P. Company fixes its loss at \$100,000 and by an amendment thereto, bearing date October 10th, 19—, this demand was increased to \$162,000.

(Follows a discussion of the evidence as to value of the "C.")

After a careful consideration of the testimony of the experts and the other evidence adduced, I find the value of the ferryboat C. on October 31, 19—, to have been \$67,462.00.

Third. Claims for damages resulting from death. These are as follows:

M. E. W., as administratrix of the estate of A. W., who claims..	\$50,000.00
E. M., as administratrix of the estate of C. F., who claims	50,000.00

Fourth. Claims for personal injuries. These are as follows:

O. W., who claims	\$10,000.00
H. W. B., who claims	500.00
J. S. C., who claims	5,000.00

As to the claims for injuries resulting from death, and for personal injuries, I was directed by the interlocutory decree to take the testimony and return the same without any opinion. All the testimony so taken, together with the testimony in support of other claims, is herewith returned.

Respectfully submitted,

(Signed) T. A.,

Dated New York, February 14, 19—.

U. S. Commissioner.

FINAL DECREE.

At a Stated Term of the District Court of the United States, for the Southern District of New York, held at the Court Rooms in the Borough of Manhattan, and City of New York, on the 23rd day of July, 19—.

Present.—Hon. E. B. T., District Judge.

In the Matter of the Petition of the O. }
Steamship Company, as owner of the }
steamship A., for Limitation of Liability. }

This cause having been heard upon the pleadings of the party petitioner herein and of the claimants answering said petition, and the proofs of the respective parties, and an interlocutory decree having been entered herein on the 14th day of September, 19—, whereby it was referred to T. A., Esq., United States Commissioner, to take any further proof that might be offered as to the amount, validity and priority of all claims to which objections and defences had been filed, and to report thereon to this Court;

And the report of said Commissioner having been filed herein, and exceptions having been filed thereto, and the Court having on the 24th day of June, 19—, filed its opinion herein overruling all the exceptions filed, and having directed the confirmation of said report. Now, on motion of R., B. & W., Esq., proctors for the P. R. Company, claimant, it is

Ordered, adjudged and decreed

First. That the report of the said Commissioner be and hereby is in all things confirmed;

Second. That the petitioner, the O. Steamship Company, within ten days from the date of this decree, do pay to the claimant hereinafter named the sums of damages, interest and costs hereby awarded, or cause to be paid into the registry of this Court moneys sufficient to discharge and pay in full the said sums so awarded, a summary statement of the amounts to be so paid being as follows:

1. For the claim of O. W. for personal effects.....	\$150.00	
Interest thereon from October 31, 19—,	21.86	
Costs of his proctors	32.16	
		<hr/>
		\$206.02

2. For the claim of H. B. for personal effects	65.00	
Interest thereon from October 31, 19—	6.89	
Costs of his proctors	17.42	
	<hr/>	89.31
3. For the claims of the P. R. Co. for loss of its ferry boat C.	67,462.00	
Interest thereon from October 31, 19—	9,241.86	
Costs of its proctors	463.81	
	<hr/>	77,167.67
4. For the claim of A. L., administratrix, etc., for the death of C. L.	5,000.00	
Costs of her proctors	89.43	5,089.43
	<hr/>	<hr/>
Making a total of		\$82,552.43

Third. That if, in making the payments prescribed by this decree, said O. Steamship Company elects to and does deposit the sums hereby awarded in the registry of this Court, in such event they shall further pay the fees and lawful charges of the Clerk of this Court for receiving, keeping and paying out the sums of money so deposited; and said Clerk is hereby ordered to distribute said moneys so deposited to the persons and corporations and in the proportions and amounts hereinabove specified and set forth.

Fourth.—That all parties having filed claims herein and whose claims have not been reported favorably by the said Commissioner, and who are not granted awards hereby, be and hereby are forever barred.

Fifth. That, upon the petitioner herein making the payments hereby prescribed, or paying the moneys hereby directed to be paid into the registry of this Court, all parties their agents, servants, proctors and attorneys, now having or pretending to have any claim or claims against the said O. Steamship Company, or its steamship A., or either of them, arising out of, occasioned by, or resulting from the collision on the 31st day of October, 19—, between the said steamship A. and the ferryboat C., are hereby perpetually restrained and enjoined from the institution or prosecution of any and all suits against the said O. Steamship Company, or the said steamship A., in respect of such claim or claims:

Sixth. That, unless an appeal be taken from this decree within the time limited by law therefor, or the payments prescribed by this decree be made, the stipulators for value and for costs on behalf of the said petitioners do cause the engagement of their stipulations to be performed, or do show cause, upon a notice of four days, why execution should not issue against them, their goods, chattels and lands.

(Signed) E. B. T.,
U. S. D. J.

FINAL DECREE.

At a stated term of the United States District Court, for the Southern District of New York, held at the court rooms in the City of New York and Borough of Manhattan this 3d day of August, 19—.

Present—Hon. M. F. G., District Judge.

In the matter of the libel and petition of
W. B. and G. B., as owners of the Steam-
ship S., for Limitation of Liability. } *Final decree.*

A verified libel and petition having been filed in this Court by the above named petitioners, on June 28th, 19—, praying for exemption from or limitation of liability for certain loss, damage, destruction and injury growing out of a fire on board their steamship S., which occurred on or about the 1st day of November, 19—, in the Suez Canal;

And an order having been duly entered whereby it was referred to a commissioner to take proof of and ascertain the value of the interest of the petitioners in the steamship S., and in her pending freight under the statutes and rules in relation to exemption from and limitation of liability, and further directing that the value of such interests when ascertained be brought into Court, or, at their option, that the petitioners file a stipulation, in such amount, to abide the decree of this court; and the said commissioner having reported the interest of such petitioners in the vessel and in the freight at the sum of \$47,480.32 as of date of the 6th November, 19—, and the petitioners having duly filed an approved stipulation in such amount:

And an order having been duly entered directing a monition to issue under the seal of this Court against all persons claiming damages for any loss, destruction, damage or injury arising from or growing out of said fire, citing them to appear before this Court and make due proof of their respective claims on or before the 29th day of September, 19—, and designating A. L., Esq., as the commissioner before whom claims should be presented in pursuance of said monition.

And upon the return of said monition proclamation having been duly made for all persons claiming damages for any and all loss, damage, destruction and injury aforesaid to appear and answer the libel and petition and to present their claims; and C. A. having presented a claim for non-delivery of cargo amounting to \$180,789.68, and L. G. having presented a claim for damage to cargo amounting to \$66,000, as will more fully appear by reference to the commissioner's report dated September 30, 19—, and stating said claims to the Court;

And no other person having presented any claim, and the defaults of all other persons having been duly entered; and the said claimants having answered the said libel and petition; and the case having come on for trial on the pleadings and proofs of the petitioners and of the said claimants and having been argued by the advocates of the respective parties; and the Court having filed its decision that the fire and the loss, destruction,

damage and injury arising therefrom were not caused by the design or neglect of the petitioners or any of them, or with their privity or knowledge, as appears by the opinion on file;

Now, on motion of M. L. & T., Esqs., proctors for petitioner, it is by the Court

Ordered, Adjudged and Decreed,

(1) That the fire described in the libel and petition was not caused by the design or neglect of the petitioners W. B. and G. B., or either of them, and did not occur with the privity or knowledge of said petitioners or of either of them.

(2) That the said petitioners be and each of them hereby is forever exempted and discharged from all loss, damage, destruction or injury arising from or growing out of the said fire;

(3) That said petitioners recover from the claimants C. A. & L. G., their costs incurred in establishing their exemption from liability in this proceeding, taxed at the sum of \$1297.07.

(4) And that unless the said claimants pay the costs of petitioner as above taxed, or an appeal intervene, the stipulators for claimants costs and expenses do cause the engagement of their stipulation to be performed, or show cause within four days after the expiration of the time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands.

(Signed) M. F. G.

U. S. District Judge.

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